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Report of the open-ended intergovernmental working group to consider the possibility of elaborating an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies on its fourth session*

Chair-Rapporteur: Abdul S. Minty (South Africa)

Summary

The Human Rights Council, in its resolution 22/33, extended the mandate of the open-ended intergovernmental working group to consider the possibility of elaborating an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies for a period of two years in order for it to undertake and fulfil the mandate as outlined in paragraph 77 of its report on its second session (A/HRC/22/41). The Council also requested the working group to present its recommendations to the Council at its thirtieth session. Those recommendations are contained in section V of the present report.

* The annexes to the present report are circulated as received.

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I. Introduction

1. The Human Rights Council decided, in its resolution 15/26, to establish an open-ended intergovernmental working group with the mandate to consider the possibility of elaborating an international regulatory framework, including the option of elaborating a legally binding instrument on the regulation, monitoring and oversight of the activities of private military and security companies, including their accountability, taking into consideration the principles, main elements and draft text as proposed by the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination.

2. In its resolution 22/33, the Human Rights Council extended the mandate of the open-ended intergovernmental working group for a further period of two years in order for it to undertake and fulfil the mandate as outlined in paragraph 77 of its report on its second session (A/HRC/22/41). The Council also requested the working group to present its recommendations to the Council at its thirtieth session. Those recommendations, which are based on deliberations held at the working group's third and fourth sessions, are contained in section V below.

3. On 26 March 2015, the Human Rights Council decided, in its resolution 28/7, to extend the mandate of the open-ended intergovernmental working group for a further period of two and a half years in order for it to undertake and fulfil its mandate, as contained in resolution 22/33.

4. The open-ended intergovernmental working group has held four sessions.[1] Its fourth session, held from 27 April to 1 May 2015, was opened by the Chief of the Rule of Law, Equality and Non-Discrimination Branch, on behalf of the Deputy High Commissioner for Human Rights. She highlighted several developments that had occurred since the third session, including the establishment by the Human Rights Council in its resolution 26/9 of an open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights. She also said that the Office of the United Nations High Commissioner for Human Rights (OHCHR) would shortly publish a progress report on legal options and practical measures to improve access to remedy for victims of business-related human rights abuses (as requested in Council resolution 26/22),[2] which is intended to contribute to a more effective implementation of the Guiding Principles on Business and Human Rights (see A/HRC/17/31, annex).[3]

5. The Deputy High Commissioner stressed that private military and security companies had a responsibility to respect human rights, as stipulated in the Guiding Principles on Business and Human Rights. That might include implementing training procedures for employees, establishing grievance procedures in cases of alleged abuses and conducting regular monitoring to ensure adequate oversight, immediate cessation of abuses and accountability. If cases of human rights abuses occurred, States had the obligation to ensure that they were referred to the authorities concerned for investigation, prosecution and reparation. From a human rights perspective, she stressed the importance of ensuring

[1] See summaries of first session (23–27 May 2011, A/HRC/WG.10/1/4), second session (13–17 August 2012, A/HRC/22/41) and third session (21–25 July 2014, A/HRC/WG.10/3/2).

[2] More information is available from www.ohchr.org/EN/Issues/Business/Pages/OHCHRstudyondomesticlawremedies.aspx.

[3] Endorsed by the Human Rights Council in its resolution 17/4.

that there was no protection gap and no impunity for private military and security companies, including for those that operated transnationally.

6. The Deputy High Commissioner indicated that the prosecution and recent sentencing by a United States federal judge of four Blackwater contractors who had killed 14 unarmed Iraqi civilians in 2007 had sent a strong signal that human rights abuses committed by private military and security companies should never remain unpunished. However, as flagged by the Working Group on mercenaries in its press release of 14 April 2015: "Justice is served in this case but must be assured globally."[4] She mentioned that other initiatives were also relevant when considering an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies. Those included the International Code of Conduct for Private Security Service Providers and the Montreux Document on Pertinent International Legal Obligations and Good Practices for States related to Operations of Private Military and Security Companies during Armed Conflict, which sought to promote respect for international humanitarian law and human rights law whenever such companies were present in armed conflicts.

II. Organization of the fourth session

A. Election of the Chair-Rapporteur

7. At its first meeting, on 27 April 2015, the working group elected the Permanent Representative of South Africa, Abdul S. Minty, as its Chair-Rapporteur.

B. Attendance

8. The list of attendance is contained in annex I to the present report. Pursuant to Human Rights Council resolution 28/7, the open-ended intergovernmental working group invited experts and relevant stakeholders to participate in its work, including the Chair-Rapporteur of the Working Group on mercenaries, Elżbieta Karska; the Director of the Security in Complex Environments Group, Paul Gibson; senior researcher in international law at the University of Pretoria, Stuart Casey-Maslen; and the United Nations Under-Secretary-General for Safety and Security.

C. Organization of the session

9. In his introductory remarks, the Chair-Rapporteur recalled the mandate of the open-ended intergovernmental working group. He indicated that at previous sessions a range of issues and challenges to the effective regulation of the activities of private military and security companies had been addressed, focusing on existing law and practice, on issues of accountability for human rights abuses linked to such activities and on the provision of appropriate assistance and remedies for victims. He also recalled that delegations had reaffirmed the shared goal of protecting human rights and ensuring accountability for violations and abuses relating to the activities of private military and security companies; and that there was widespread agreement about gaps in the current regulatory framework, not least because only very few States had specific legislation on such companies. The Chair-Rapporteur mentioned that how to ensure effective remedies and accountability

[4] Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15840&LangID=E.

remained one of the central challenges, and he highlighted the clear mandate of the working group in that regard.

10. At its first meeting, on 27 April 2015, the open-ended intergovernmental working group adopted its agenda (A/HRC/WG.10/4/1) and programme of work.

11. One delegation commended the Chair-Rapporteur for his ability to get consensus in the past and referred in particular to paragraph 77 of A/HRC/22/41, but regretted that the sponsor of the resolutions presented at the twenty-second and twenty-eighth sessions of the Human Rights Council had disregarded the potential for consensus and had opted instead to divide the Council, with a view to discussing a draft convention on which there had been no consensus in 2011. The same delegation pointed to the underlying question as to why some delegations invested in building consensus during sessions of the open-ended intergovernmental working group if that consensus was meant to be undermined with a voted resolution. It also regretted that its request to invite stakeholders to provide updates on recent developments in the processes on the International Code of Conduct for Private Security Service Providers and the Montreux Document had not been met. Some delegations noted that paragraph 77 set forth the scope of the mandate of the working group and the basis for continued cooperation.

12. Some delegations highlighted the need for victims to have the right to an effective remedy, including reparations, and for an international legally binding instrument in addition to national initiatives on the activities of private military and security companies. Those delegations indicated that such companies, given their specificities, should not be allowed to regulate their own behaviour, which could only be done by an independent authority. In their opinion, the current normative framework, including the Montreux Document and the International Code of Conduct, failed to address the complexities of the problem, nor did they establish proper mechanisms for accountability, effective remedies for victims, regulation, monitoring and oversight of those entities and their personnel. Some delegations recommended that the open-ended intergovernmental working group begin discussions on concrete elements for inclusion in a legally binding instrument during the fourth session.

13. In that regard, Pakistan indicated that it had submitted draft elements for a possible instrument, based on human rights instruments, the Montreux Document and the International Code of Conduct, the draft which had been prepared by the Working Group on mercenaries.[5] The delegation urged the Chair-Rapporteur to present the text of a draft convention based on those elements and the deliberations at the session, for the consideration of States, before the next session. South Africa suggested that norms should be elaborated in international law to (a) define private military and security companies; and (b) hold such companies accountable under international humanitarian and international human rights law. The new instrument should complement national and regional mechanisms, particularly in the area of combating impunity and effective punishment. It should also include mechanisms for recourse in cases of violations. Such mechanisms would include a committee on the regulation, oversight and monitoring of private military and security companies, an enquiry and a complaint procedure and reporting mechanisms on compliance with new norms and standards in international human rights and humanitarian law by private military and security companies.

14. Some delegations added that international regulation must be complemented by effective national laws and policies that would allow States to investigate and prosecute violations of international human rights and humanitarian law. In their view, as a second

[5] See www.ohchr.org/Documents/HRBodies/HRCouncil/WGMilitary/Session4/Pakistan.pdf.

step, any regulatory gaps in areas such as accountability, remedies, licensing and oversight should be filled through an international legally binding instrument that would complement existing initiatives.

D. General discussion

15. Some delegations provided an update on the Montreux Document and the International Code of Conduct Association processes. The Montreux Document, which has been signed by 52 States and three international organizations, applies to companies operating during armed conflicts and recalls the existing obligations of States under international humanitarian law in situations of armed conflict. The Montreux Document Forum was formally launched on 16 December 2014. Some delegations questioned the effectiveness of the Montreux Document and referred to concerns expressed in *Progress and Opportunities, Five Years On: Challenges and Recommendations for Montreux Document Endorsing States*.[6]

16. Some delegations also noted recent developments regarding the International Code of Conduct Association, which had held its first annual plenary in December 2014. Some delegations noted that the International Code of Conduct was aligned with the Guiding Principles on Business and Human Rights, and that the Association was not purely a self-regulation body, as its board was composed of States, companies and civil society. Some delegations said that the Association could develop oversight mechanisms on certification, monitoring and compliance. In the view of some delegations, the complementarity of the Montreux Document and the International Code of Conduct, in addition to domestic legislation, confirmed that there was no legal vacuum.

17. Some delegations also referred to the International Organization for Standardization (ISO) and its new *Management System for Private Security Operations: Requirements with Guidance* (ISO 18788),[7] which was expected to be released in June 2015 and which incorporated relevant elements of the Guiding Principles on Business and Human Rights. The new standard was a development from the *Management System for Quality of Private Security Company Operations: Requirements with Guidance* (ANSI/ASIS PSC.1-2012). One delegation referred to the OHCHR-led project to improve access to remedy for victims of business-related human rights abuses, which had the potential to identify effective ways to progress on access to remedies.

Developments at the national level

18. The United States of America highlighted that the Department of State required that companies bidding on its worldwide protective services programme must have membership in good standing in the International Code of Conduct Association and confirmed compliance with PSC 1-2012. It also referred to possible criminal charges under the False Claims Act for those private security companies which falsely stated that they were in compliance with the required standard. The delegation further referred to the Department of Defense's work with the International Institute of Humanitarian Law and the United Nations Office on Drugs and Crime on separate initiatives to assist States in the development of rules on the use of force by private military and security companies in support of provisions in the Montreux Document. The delegation also noted the recent convictions of four Blackwater contractors, which demonstrated the commitment and

[6] Available from www.dcaf.ch/Publications/Progress-and-Opportunities-Five-Years-On-Challenges-and-Recommendations-for-Montreux-Document-Endorsing-States.

[7] Available from www.iso.org/iso/home/store/catalogue_tc/catalogue_detail.htm?csnumber=63380.

ability of the United States Government to pursue and obtain justice in cases of violent crimes committed by contractors.

19. South Africa referred to the Regulation of Foreign Military Assistance Act No. 15 of 1998, which regulated "the rendering of foreign military assistance by South African juristic persons, citizens, persons permanently resident within the Republic and foreign citizens rendering such assistance from within the borders" of South Africa. It added that while law enforcement agencies had consistently sought to look into those activities, they had not often been successful in the light of the non-cooperation of countries where the activities had taken place, which were often those countries involved in the Montreux Document and International Code of Conduct processes.

20. Norway referred to the 2001 Act on private security companies operating on Norwegian territory, which had been subject to substantive changes in 2011. The purpose of the Act was to ensure the rights of individuals who were handled by representatives of private security companies; a high quality of services; sufficient control and oversight over such businesses; and that they only operate within the parameters of the Act itself. Norway became a member of International Code of Conduct Association in early 2014 and believed that it could be significant in ensuring that private security companies in complex environments respected international law and in improving oversight and accountability.

21. The European Union recalled its view that private military companies and private security companies should be addressed separately, given their very broad and diverse range of activities. With regard to accountability and access to remedies, the European Union recalled the existing solid provisions in the "Brussels I" regulation, as revised. The European Union noted that States and international organizations, as clients, could enhance standards in the operations of companies. It stated that the European Union and its member States were determined to further consider how best to make use of the International Code of Conduct, including in their procurement processes. It added that much had been done by the European Union and others to implement the Guiding Principles on Business and Human Rights, as they were instrumental in preventing and remedying abuses across sectors, including by private military companies and private security companies.

22. Australia noted that it was a signatory to the Montreux Document, was an active member of the International Code of Conduct Association and had participated in the development of new standards. The Department of Foreign Affairs and Trade required that private military and security companies be signatories to the Code and comply with relevant provisions of the Montreux Document in order to provide ad hoc services. Any international regulatory framework should focus on strengthening compliance with existing international law and on ensuring accountability. A multifaceted approach encompassing national legislation and international cooperation was the most effective response.

23. The United Kingdom of Great Britain and Northern Ireland referred to its Security Industry Authority, set up under the Private Security Industry Act 2001, which was responsible for regulating the private security industry by, inter alia, operating a licensing regime for individual security operatives and a voluntary approvals scheme for security businesses. Furthermore, the International Criminal Court Act 2001 provided jurisdiction to prosecute certain crimes committed by British nationals in or outside the United Kingdom. The Department of Transport also issued interim guidance to United Kingdom flagged ships on the use of armed guards to defend against the threat of piracy in exceptional circumstances. The United Kingdom Accreditation Service accredited auditors for professional standards, and was a signatory to the International Accreditation Forum Multilateral Agreement.

24. Switzerland referred to its new federal law on private security companies, which had been adopted in September 2013 and was expected to come into force in September 2015.

The law would apply to individuals and companies providing security services abroad, from Switzerland, or who would provide, in Switzerland, services linked to security services provided abroad. The law also applied to companies established in Switzerland that exercised control over security companies active abroad, and prohibited certain activities relating to direct participation in hostilities or to grave violations of human rights.

25. The Russian Federation recalled that its legislation did not provide for the extraterritorial activities of private military and security companies, including military activities. Those functions could only be undertaken by State institutions. In view of global trends, legal and political experts in the Russian Federation were discussing the advisability of expanding the activities of private military and security companies and outsourcing some State functions. Arguments in favour included considerations of professionalism, mobility, effectiveness and cost-effectiveness. The Russian Federation noted that any such move would need to be carried out within existing international human rights and international humanitarian law, and highlighted that challenges included the lack of State control over those activities, the lack of remedies and the current legal norms, which were insufficient or ineffective.

26. The Chair-Rapporteur indicated several possible points for discussion such as the implementation of existing standards by States, including grievance procedures for victims, cases brought against companies and their outcome.

27. The Colombian Commission of Jurists referred to general comment No. 35 of the Human Rights Committee, in which it was noted, inter alia, that when private individuals or entities are empowered or authorized by a State party to exercise powers of arrest or detention, the State party remains responsible for adherence and ensuring adherence to article 9 of the International Covenant on Civil and Political Rights.

28. The Executive Director of the International Code of Conduct Association[x] provided an update on the key governance and oversight functions of the Association, indicating that a draft certification procedure was pending consideration by the Association's Board of Directors and its General Assembly. The Association anticipated that its reporting, monitoring and assessment of performance functions would be significantly developed in the future, and would involve extensive stakeholder outreach. The Executive Director also noted that clients of private security companies had approached the Association to discuss making membership in the Association a requirement in contracts with companies, as well as an authorization criterion in national legislation (Switzerland). Some had also raised the intention of the United States Department of State to make membership in the Association a requirement for potential contractors involved in the Department's worldwide protective services programme.

29. The second meeting of the fourth session concluded with an interactive dialogue. One delegation and the Chair-Rapporteur queried the ability of the International Code of Conduct Association to ensure accountability, access to remedy and transparency in the process of examining a complaint. The Executive Director responded that the Association was limited by its articles of association and by the powers conferred to it by its members (Governments, companies and civil society). He added that the Association would never be able to supplant the role of national laws and national law enforcement bodies, but it would

[x] Before giving the floor to Mr. Orsmond from the International Code of Conduct Association, the Chair-Rapporteur recalled Human Rights Council resolutions 22/33 and 28/7, in which the Council decided that the intergovernmental working group "shall invite experts and all relevant stakeholders to participate in its work". He also recalled that during the third session, industry representatives had been welcome to participate in the session either as an independent stakeholder or member of a delegation (A/HRC//WG.10/3/2, para. 12).

certainly have the ability to influence the industry from a business standpoint. He concluded that, although the Association's grievance mechanism was not as developed as its certification mechanism, respect of national and international law was viewed as a fundamental responsibility.

III. Discussion on specific topics

A. Substantive report of the Chair of the Working Group on mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination

30. In her statement on 28 April 2015, Ms. Karska said that the Working Group on mercenaries had undertaken additional research on national laws and regulations regarding private military and security companies in eight countries in Central America and the Caribbean, eight countries in South America and four countries in Europe (A/HRC/30/34).[9] Three other reports had already been submitted to the Council.[10] Its 2016 report to the Council would address the national legislation of countries in Eastern Europe, North America and the Pacific. Those studies had assessed existing national laws regarding private military and security companies and their effectiveness in protecting human rights and promoting accountability for violations, and had aimed at identifying common points, good practices and regulatory gaps that might exist. A global analysis would be presented to the General Assembly in 2016.

31. Ms. Karska said that the Working Group had held two expert meetings and consulted with stakeholders, including on the use of private military and security companies by the United Nations. Those efforts had informed the discussions of the Working Group on a possible legally binding instrument for the regulation of such companies. Those reflections were contained in the concept note prepared by the Working Group for consideration at the current session of the open-ended intergovernmental working group.[11]

32. Ms. Karska added that the concept note reflected the perspectives and experiences of government officials, experts and civil society representatives, and was the result of extensive consultations held by previous members of the Working Group. The first draft of a possible convention was the basis for that reflection (see A/HRC/15/25, annex), while the concept note was also the outcome of the ongoing research on national legislation referred to above. Moreover, the concept note represented the commitment of the Working Group to advancing a coherent, focused and realistic framework for the consideration of the open-ended intergovernmental working group.

33. In seeking to achieve the above, the Working Group on mercenaries had distilled its key concerns into the following eight main points:

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[9] Costa Rica, Cuba, El Salvador, Guatemala, Honduras, Mexico, Nicaragua and Panama; Argentina, Bolivia (Plurinational State of), Brazil, Chile, Colombia, Ecuador, Peru and Uruguay; and France, Hungary, Switzerland and the United Kingdom.

[10] Burkina Faso, Cameroon, Côte d'Ivoire, the Democratic Republic of the Congo, Mali, Morocco, Senegal and Tunisia (A/HRC/27/50); China, India, Malaysia, Pakistan, the Philippines, Singapore, Sri Lanka and the United Arab Emirates (A/HRC/27/50); and Botswana, Ghana, the Gambia, Kenya, Lesotho, Mauritius, Namibia, Nigeria, Sierra Leone, South Africa, Swaziland, Uganda and Zimbabwe (A/HRC/24/45).

[11] Available from www.ohchr.org/Documents/HRBodies/HRCouncil/WGMilitary/Session4/WG_MercenariesCN_14April2015.pdf.

(a) The Working Group acknowledged that certain functions were inherent to the State, for which it retained ultimate responsibility regardless of whether or not it outsourced that function. Some inherent State functions might not be outsourced, namely direct participation in hostilities in armed conflict, and detention and interrogation of prisoners of war, as defined in the Geneva Convention of 12 August 1949 relative to the Treatment of Prisoners of War. The Working Group proposed that recommendations for the recognition of different classifications of service activity be included in the draft. Those classifications were predicated on identifying which activities increased the risk of human rights violations when undertaken by private actors. They also addressed the gap left by the Montreux Document, which applied solely to armed conflicts;

(b) Intergovernmental organizations, as well as States, could become party to the convention. While that was not new, it reinforced the notion of accountability of intergovernmental organizations and supported the growing trend of such organizations assuming their objective international legal personality in becoming party to international instruments;

(c) The Working Group proposed one article on implementation, bringing together the different related articles in the first draft convention. Obligations under that article would apply to domestic and international companies, as well as to services offered to States and to intergovernmental, non-State and corporate clients;

(d) The Working Group offered a new definition of a licence, which would serve as a modality for establishing and enforcing standards;

(e) The Working Group put forward one coherent article on licensing covering five focus areas, again bringing together related elements in the first draft convention;

(f) Registration should take place as a secondary step following licensing. That built on the registry of the first draft convention and would serve as a monitoring system of related actors and activities;

(g) The Working Group introduced a new framework of regulation of jurisdiction. The new draft sought to strengthen accountability and extraterritorial provisions, notably to cover the complex environments in which the security industry often operated. The framework applied the following hierarchy of principles for establishing jurisdiction: active person; passive person; territoriality; and universal jurisdiction;

(h) The Working Group deemed it essential to establish a mechanism for the purposes of oversight and ensuring remedy and reparations for victims. The modality, be it a committee or ombudsperson or other modality, had not yet been determined, but any mechanism that could regularly, efficiently and comprehensively undertake monitoring and investigation and guarantee remedy for victims was worthy of review.

34. Ms. Karska concluded by hoping that that new formulation of key principles would be a source of fruitful and constructive discussion among the open-ended intergovernmental working group, and would build a stronger foundation for mutual consideration and shared positions as deliberations progressed.

35. During the subsequent discussion, some delegations welcomed the concept note prepared by the Working Group. According to one delegation, the concept note comprehensively covered the elements that might be included in the kind of legally binding instrument for which the open-ended intergovernmental working group had been created. It also suggested that the Chair-Rapporteur consolidate all proposals, including the concept note, for future deliberations and as a basis for future work. Furthermore, it expressed its appreciation for the work of the International Code of Conduct Association and the Government of Switzerland in relation to the Montreux Document, and said that it was time for the intergovernmental working group to pull together all those efforts in a

comprehensive manner. Another delegation suggested that the draft be discussed among Governments, and not only within an expert body.

36. One delegation pointed out that the work of the Working Group on mercenaries to map existing legislation on private security and military companies might be undermined if it was meant to support a pre-established position that a legally binding instrument was the "best way to ensure adequate protection of human rights" without developing arguments that could highlight the advantages of other options. The same delegation expressed concern about the Working Group's plan to further elaborate a draft convention, which seemed to go beyond its mandate and risk complicating discussion in the intergovernmental process. Some delegations said that they did not support the draft convention elaborated by the Working Group, which had not met with consensus at the open-ended intergovernmental working group's first session. They recalled that the mandate of the open-ended intergovernmental working group had been broadened (see A/HRC/22/41, para. 77). Some delegations reiterated that a convention was not necessary, but that there was a need to strengthen domestic laws and their implementation, as well as to see how the International Code of Conduct and other initiatives translated into practice. One delegation noted that the concept note was highly problematic as it took discussions back to those held during the first session of the intergovernmental working group in 2011. The delegation suggested that other options could be explored, including guidelines, possible plans of action, model laws, good practices and mutual legal assistance programmes.

37. The Colombian Commission of Jurists welcomed the concept note as a good starting point, while noting that it was linked to a new set of articles that was not yet available and that could not, therefore, be properly commented upon.

38. In response to questions from delegations, Ms. Karska said that the Working Group was convinced that an international convention would be the best mechanism to regulate the issue of private military and security companies. That did not exclude other options, including guidelines, model laws and legal assistance programmes, which in the opinion of the Working Group were complementary. Gaps in national law still existed and the analysis of the Working Group had not shown much progress in that regard. As such, an international convention would be an effective mechanism for a better implementation of a system of control. Ms. Karska highlighted that the Working Group welcomed all comments and suggestions from States on its concept note, as it sought to finalize its proposed new draft convention by the end of 2015. In that regard, the Chair-Rapporteur of the open-ended intergovernmental working group suggested that any comments should be forwarded to the secretariat by the end of May 2015, for transmission to the Working Group on mercenaries.

39. Delegations discussed the way forward with regard to the elaboration of possible recommendations on the future programme of work for the open-ended intergovernmental working group. Some noted that there was no consensus on any further discussion on the draft convention elaborated by the Working Group on mercenaries and discussed by the intergovernmental working group in 2011. One delegation noted its preference for the recommendations from the session not to refer to the concept note or the possibility of a revised draft convention, while recognizing that the report of the intergovernmental working group would duly reflect what was said by all delegations and speakers. Delegations discussed the mandate of the intergovernmental working group, which one delegation said was to look into elaborating a new instrument, while another said that it did not call specifically for the drafting of a legally binding treaty but rather to considering the possibility of elaborating an international regulatory framework. One delegation mentioned that the intergovernmental working group had not explored the range of options; instead, there seemed to be an attempt to discuss a draft on which there was no consensus.

B. Discussion with representative of private military and security companies

40. On 28 April 2015, the Director of the Security in Complex Environments Group, Mr. Gibson, indicated how responsible companies within the private security sector were embracing standards and regulations to ensure that their operations were transparent, accountable and compliant with international and national legislation, including human rights law.

41. Mr. Gibson first addressed the notion of the "complex environments" in which security companies worked. He admitted that the hitherto unregulated private security sector had fallen short of internationally recognized standards and that not all of those shortcomings had been addressed. However, he contended that the private security companies with which he had engaged were demonstrably embracing standards and regulations to ensure that they operated in an appropriate and transparent manner, and within the rule of law.

42. As for the companies that he represented, Mr. Gibson clarified that they did not employ mercenaries, a term he labelled emotive and implying action for financial gain. Those companies did not conduct offensive military operations but provided a range of risk management and protective services for their clients that were essentially defensive in nature. He said that weapons were rarely fired and then only for self-defence.

43. Mr. Gibson proceeded with an overview of self-regulation initiatives with regard to private security companies, including the Montreux Document and the International Code of Conduct. He highlighted the PSC-1 standard, which had been endorsed by the Government of the United Kingdom in 2013, and stated that British companies were being independently audited and certified against that standard. He recalled that the standard was expected to become fully international in 2015 and would be known as ISO 18788. He mentioned that full members of the Security in Complex Environments Group were required to demonstrate that they were working to achieve certification under PSC-1. Mr. Gibson also recalled the core functions of the International Code of Conduct Association, and explained his organization's engagement with it, including to encourage others to develop coherent, transparent and affordable standards and oversight mechanisms. With regard to regulations in the maritime sector, Mr. Gibson briefly outlined the most recent developments, calling the publication of ISO 28007 in March 2015 a game changer that offered maritime security companies a robust auditable standard.

44. Mr. Gibson acknowledged that the key to the success of those standards had been the identification of independent third-party accreditors, who ensured that companies claiming to comply with the standard did so fully and in an auditable fashion. The United Kingdom Accreditation Service had accredited four certification bodies and they conducted rigorous third-party audits of companies to certify them against PSC-1 and ISO 28007. Those bodies, for example, had to assess how well the company's human rights impact assessments had been incorporated in their management processes. In support of those international standards, the Security in Complex Environments Group had established an enhanced vetting process, using a credible and respected national body: the Disclosure and Barring Service. Mr. Gibson also mentioned that City and Guilds had developed a Maritime Security Operative Qualification that encapsulated all the core competencies required by ISO 28007, and that the United Kingdom had put in place a licence regime for the export, control and disposal of weapons used by private security companies.

45. Mr. Gibson also highlighted some of the industry's frustration with the understandably cautious approach of the Government of the United Kingdom in handling operational issues affecting the sector, including with regard to floating armouries, a feature

of maritime security operations in the Indian Ocean. Mr. Gibson pointed out that following sustained engagement the British Department for Business Innovation and Skills had announced that it would issue British trade licences authorizing the use of floating armouries for the storage of controlled equipment, including firearms. While he described that as a significant step, he asserted that more needed to be done to facilitate a floating armoury operating under a United Kingdom flag. He further stated that the restrictive nature of the firearms legislation currently prevented appropriate firearms training in the United Kingdom.

46. Finally, Mr. Gibson commented on the decline of Western defence spending without a commensurate decline in political ambition, creating a strategic deficit that would have to be filled by the private sector. Governments would have to increasingly outsource contracts to the private sector in areas that until recently had been considered to be the exclusive prerogative of the military. He also recalled that private security companies were in the business of making a profit, and that it was important that the costs of increasing regulation should not make companies uncompetitive — so as not to penalize those who wished to comply. He emphasized that it was everyone's responsibility to ensure that clients understood the importance of regulation, and that the additional costs arising from it were worth accepting.

47. Some delegations raised questions regarding the potential of the International Code of Conduct Association to become an effective mechanism and the consequences of non-compliance with applicable law. In his response, Mr. Gibson stated that the Association was still in an early phase of its operationalization, and that the complex issues of certification and oversight were still being discussed. He was confident, however, that there was a real consensus within the Association to make it an organization with teeth. The representative of the Association similarly recalled that it was a three-pillar organization that also included States and civil society. There was agreement that the Association must have effective oversight mechanisms, the ability to exclude those who did not comply and effective grievance mechanisms also offering access to remedies. Some delegates clarified that voluntary regulatory frameworks and recourse avenues neither replaced national legislation and regulation, which took precedence, nor replaced criminal proceedings where appropriate. Mr. Gibson confirmed that the majority of members were from Europe or the United States and that the success of the initiative would depend on the ability of the Association to reach out to other regions. The Executive Director of the Association added that the most recent applications had come from non-Western States, indicating an increased interest and awareness in other regions.

48. Delegations sought Mr. Gibson's views on issues regarding the use of private military and security companies in complex environments, for example: (a) cases where foreign nationals had engaged in military activities and committed violations, but had benefited from diplomatic immunity; (b) cases where private military and security companies had been in charge of administrating detention centres and prisons; (c) cases where private military and security companies had been hired to protect extractive industries and had committed human rights abuses; (d) reports that floating armouries were placed on the high seas to circumvent national regulations and control; (e) the employment of South African citizens by private military and security companies in violation of South African law, which made it illegal for any South African to render foreign military assistance; and (f) the industry's lack of denials of, or credible responses to, numerous allegations of human rights abuses committed by private military and security companies.

49. In his responses, Mr. Gibson stated that the companies he represented had no diplomatic immunity and that they, their employees and subcontractors were fully accountable under domestic and international legislation. He confirmed that some companies had indeed been involved in the administration of detention facilities and that

they should be subject to regulation and be held accountable for any abuses committed. He also conceded that some environments were particularly problematic owing to the absence of the rule of law. He emphasized that, in order to avoid abuses, it was critical to vet and train employees of private security companies, but also to make clients understand that they bore responsibility for contracting reliable companies only.

50. Mr. Gibson explained that floating armouries were placed in the Indian Ocean near the routes of ships that required protection, and not as a way to circumvent control. He said that those armouries fell under the jurisdiction of the flag State, but also expressed sympathy for the view that in some of those States the regulatory frameworks were not sufficiently robust. He refuted the suggestion that staff of maritime security companies might find it easier to shoot first and ask questions later. He explained that companies adhered to strict rules on the use of force that mandated proportionate and escalatory measures, that experience had shown that the firing of warning shots was enough to deter and avert pirate attacks, and that maritime security companies did not detain pirates. He also stated that privately contracted armed security personnel on ships wore helmets fitted with cameras to provide full visibility and accountability for their actions.

51. With regard to the employment of South African citizens by private military and security companies, Mr. Gibson agreed that South Africa should receive a considered response on why there had so far been no commitment in the context of the Montreux Document or the International Code of Conduct not to recruit South Africans in violation of South African law. The representative of the International Code of Conduct Association concurred with that view. With regard to the suggestion that private security companies were not responding to allegations of human rights abuses, Mr. Gibson said the companies he dealt with had grievance mechanisms embedded in their business models that enabled thorough investigations to take place following an allegation of a human rights abuse. The industry welcomed civil society and others bringing such allegations to the fore to enhance the transparency and accountability of those investigations. In due course, oversight mechanisms would also be in place under the auspices of the Association.

52. One delegation described the International Code of Conduct as a gentlemen's agreement and the Association as a gentlemen's association, and considered them insufficient to protect victims of human rights abuses. Pointing out that the self-regulatory system in the banking industry had proved insufficient, it was questioned whether self-regulation processes could be trusted and whether there was any experience with such processes functioning satisfactorily. Mr. Gibson explained that, in his view, considerable success had been achieved with voluntary regulation in the private security sector. In a short time frame and with the industry as catalyst, two international standards recognized by ISO had been developed and the Association had been created. However, Mr. Gibson added that the industry would not be opposed to an international legally binding instrument, with the critical proviso that it must create a genuinely level playing field at the global level. If that were achieved, the industry would be fully supportive. Some delegations commended Mr. Gibson for that statement, recalling their view that a global and binding convention laying out the minimum standards was necessary.

C. Specificities of regulating sea-based private security activities

53. On 29 April 2015, senior researcher in international law at the University of Pretoria Mr. Casey-Maslen presented some of the issues regarding the use of force by private maritime security service providers, in particular with respect to counter-piracy operations and how they might affect the possible international regulatory framework governing private security companies. While the Security Council, in its resolution 1851 (2008), referred to "applicable international humanitarian law", counter-piracy operations and

measures were undertaken not within the realm of the law of armed conflict, but under international law of law enforcement, which combined international human rights law and general principles of domestic criminal law with international criminal justice standards.

54. The use of armed private security providers to protect commercial shipping had increased in recent years, and had been an important factor in reducing the number of successful acts of piracy and armed robbery at sea. Bringing weapons on board a vessel had its own risks, in terms of physical security to crew members and respect for a State's obligations under international law on the transfer of conventional weapons and in terms of the risk of reckless and excessive use of force, including lethal force, by personnel in an environment where effective monitoring and oversight were exceptionally hard to ensure.

55. Mr. Casey-Maslen noted that, in carrying out their duties, State law enforcement officials were required to use force only when necessary and to employ only such force as was necessary in the circumstances and proportionate to the threat.[12] Lawful use of force by private maritime security service providers was limited to acts carried out in defence of any person from unlawful violence. That might encompass lawful acts involving use of force when under imminent threat of attack, either in self-defence or in defence of others. The determination of whether any particular use of force in the maritime environment met the legal criteria might be contentious given the lack of detailed guidance at the domestic level on what was and was not lawful; materially differing domestic criminal law thresholds for justified use of force in self-defence; and a lack of consensus as to which national law should determine legality.

56. Mr. Casey-Maslen undertook a review of selected national jurisdictions and standards, including the 2012 interim guidance of the International Maritime Organization (IMO).[13] He also referred to the case before an Indian court in which two Italian marines had allegedly opened fire on a vessel, killing two Indian fishermen on board; the trial of the two marines had recently been postponed to July 2015.

57. Mr. Casey-Maslen noted that a detailed code on use of force in the maritime environment was lacking and that that lacuna could not be filled in the proposed international regulatory framework. He also referred to the guidelines elaborated by the Geneva Academy of International Humanitarian Law and Human Rights in 2012.[14]

58. He noted that the core law enforcement function of arrest, and a concomitant power to use force in order to effect a lawful arrest involving use of force, were functions inherent to the State. He added that, to some extent, those powers were delegated in the maritime environment. Whether or not private security service providers had been granted those powers, they might need to use them, leading to concerns about treatment of suspected pirates in detention and respect for the fundamental right to habeas corpus.

59. Finally, as recognized by the Security Council in its resolution 2184 (2014), the solution to the problem of piracy lay on land rather than at sea. Mr. Casey-Maslen concluded that, in the meantime, use of armed private security service providers looked likely to continue, with all the risks that that entailed.

60. One delegation noted that it was essential to acknowledge the work undertaken by IMO and that the Human Rights Council should not duplicate the work done by IMO. Another delegation underlined the primary role of IMO in the context of sea-based

[12] See principle 9 of the 1990 Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, available from www.ohchr.org/EN/ProfessionalInterest/Pages/UseOfForceAndFirearms.aspx.

[13] See www.imo.org/OurWork/Security/SecDocs/Documents/Piracy/MSC.1-Circ.1443.pdf.

[14] Available from www.geneva-academy.ch/docs/projets/Counterpiracy.pdf.

activities of private military and security companies and stressed the relevance of the 2012 IMO interim guidance in that regard. Some delegations requested further information about the IMO interim guidance and its implementation. A delegation and the Chair-Rapporteur expressed regret at the absence of IMO at that session. The Chair-Rapporteur confirmed that he would continue to invite IMO to cooperate with the open-ended intergovernmental working group and provide any information relevant to its work. He also encouraged stakeholders to provide relevant information on that issue for the consideration of the working group. He noted that the working group was particularly concerned with accountability and ensuring remedies for victims of human rights abuses and sought clarification on any cases involving such issues, including evidentiary issues of incidents at sea.

61. One delegation asked about the phenomenon of "floating arsenals" located outside territorial waters, which by their name pointed possibly to a type of unofficial warship. It also described the situation by which armed merchant ships would sail into territorial waters and be granted temporary firearms permits; once that system was implemented, the ships stopped entering the waters and instead were floating arsenals outside those waters. The same delegation asked how the challenges with regard to the flag State (in situations where flags of convenience were used) could be addressed. Some delegations requested information about trends in piracy and which parts of the world were affected. One delegation queried how national legislation could address the extraterritorial nature of companies in that sector in the absence of a legally binding instrument. Another delegation acknowledged other processes such as the Contact Group on Piracy off the Coast of Somalia.

62. In response to a suggestion to use the terms "floating armoury" or "floating safe" instead of the term "floating arsenal", Mr. Casey-Maslen agreed that such terms might be more appropriate and he acknowledged the risks associated with using them. He clarified that they had been created as an attempt to address the problem of weapons being thrown overboard, when vessels sought to enter ports in States that did not allow weapons to be brought into their territorial waters. He also acknowledged the challenges associated with flags of convenience and with vessels that did not fly a flag, and pointed out that the general principle of the duty of the flag State[15] might need to be considered in terms of the reality of counter-piracy operations. Mr. Casey-Maslen further questioned the credentials of some of the companies that undertook armed security services. He noted that the IMO interim guidance was widely referred to, while he considered that it did not go into enough detail with regard to when the use of force would be lawful. He referred to the ongoing case in India and the questions regarding the limits of self-defence.

63. Mr. Casey-Maslen noted that the Contact Group on Piracy off the Coast of Somalia had encouraged the adoption of laws to allow for prosecutions in the light of the practice of "capture and release". He clarified that the guidelines of the Geneva Academy of International Humanitarian Law and Human Rights had been developed as a contribution to the debate, and noted that existing guidance by States was not sufficiently detailed with regard to self-defence. Demand for armed security services had been driven by a perception of a very real risk, especially in the Gulf of Aden, the Gulf of Guinea and the South China Sea, and he pointed to IMO reports on piracy for further details.[16] The crime of piracy was a domestic crime, while domestic legislation could encourage States to exercise jurisdiction on the high seas. The United Kingdom clarified that it had moved to address the crime of piracy and that the United Kingdom interim guidance was intended for use of British

[15] See the United Nations Convention on the Law of the Sea.

[16] Available from www.imo.org/OurWork/Security/PiracyArmedRobbery/Reports/Pages/Default.aspx.

flagships, and not for jurisdiction over other ships. Finally, Mr. Casey-Maslen noted that evidentiary issues and ensuring the respect for the fundamental right to habeas corpus on vessels were a challenge.

64. Norway provided further details of its national legislation and regulations. The use of private security companies on board ships registered in Norway was not regulated by the act on private security companies, but by Regulation 972/2004 on Ship Security. Particular rules governing shipowners' use of private security companies were included in the regulation in 2011. The regulation did not provide requirements directed towards the security companies themselves. Rather, it addressed the responsibilities of shipowners of informing Norwegian authorities when and why use of private security services were required; providing an assessment of the company in question including its internal recruitment and training procedures; and its regulations on use of arms. Shipowners were required to emphasize IMO guidelines in the selection and use of private security guards on board. Norwegian authorities had the competency to decide that certain private security companies might not be used by Norwegian shipowners. The regulation also stipulated when armed guards might be used; how weapons were to be stored on board; and procedures for the use of armed weapons. In 2011, Regulation 904/2009 Relative to Arms was supplemented with a provision regulating the circumstances under which ships registered in Norway might store arms on board on behalf of private security companies. Such storage was only allowed for the objective of protecting the ship against acts of terror or piracy, and required permission granted by Norwegian police. Only ships certified under the International Ship and Port Facility Security-regulations of IMO might be granted such permission, and the permission was only valid when sailing in, to or from certain geographic areas. That regulation was also followed by reporting requirements, in line with IMO guidelines, including to the Norwegian National Criminal Investigation Service if there was reason to believe that the use of force had resulted in personal injury or death. Whenever arms had been used, that had to be reported to the Maritime Directorate.

D. Use of private security companies by the United Nations

65. On 29 April 2015, the Under-Secretary-General for Safety and Security outlined the main features of the current global security context. He referred to a recent report on the safety and security of humanitarian personnel and protection of United Nations personnel (A/69/406), according to which personnel served in increasingly dangerous environments and encountered a variety of threats not previously encountered. He added that the existing threat had been aggravated by the blurring of the lines between criminal and extremist groups, the expansion of the latter and the emergence of new extremist groups. Against that background, the United Nations had engaged armed private security companies in selected duty stations as a last resort, in an effort to strengthen the safety and security of its personnel and to enable the Organization to deliver its programmes and mandates in high-risk environments. That was particularly true in high-risk areas where peacekeeping forces had yet to be deployed and where critical political or humanitarian needs existed. To date, the United Nations had contracted armed private security services in three countries where peacekeeping and political missions had been established (Afghanistan, Haiti and Somalia) out of the more than 170 countries in which the United Nations maintained a presence.

66. The Under-Secretary-General stressed that the "last resort principle" guided the United Nations as to when it might be appropriate to seek out armed private security services. He added that armed private security services were engaged exceptionally, when other options, namely security services by the host Government and other Member States

were not provided for or, alternatively, when security professionals and officers from within the United Nations system were unavailable. The principle was articulated in the United Nations Policy on Armed Private Security Companies,[17] which clarified the roles and responsibilities for recommending and approving the use of specific companies; and outlined specific selection criteria, along with screening and training requirements for contracted personnel. It also covered roles and responsibilities with respect to management and oversight.

67. The above-mentioned United Nations policy was accompanied by Guidelines on the Use of Armed Security Services from Private Security Companies,[18] which further specified roles and responsibilities for determining when it might be appropriate to obtain armed private security services. They set forth specific criteria for recommending the use of specific armed private security companies, based on the latest security risk assessment, while identifying the types of services that might or might not be contracted out to such companies. The Guidelines also provided further details, including on screening and training requirements of contracted personnel.

68. The Under-Secretary-General recalled that respect for international human rights law and international humanitarian law was among the core values of the United Nations, including the Department of Safety and Security. It took all measures in that regard, including collaborating with other United Nations departments, offices as well as agencies, funds and programmes on various policies, procedures, standards and other arrangements, in accordance with the Human Rights Up Front initiative. That initiative aimed to mainstream human rights considerations in all United Nations activities and programmes and foster engagement with Member States on human rights issues. The United Nations Security Management System Policy Manual and related guidelines sought to contract only with those armed private security companies with the highest standards of integrity, competence and performance in line with internationally accepted human rights standards and principles, while barring contracts with those convicted or implicated in human rights abuses or criminal offences. At the same time, the most efficient way of ensuring that international human rights and humanitarian principles were adhered to was to properly implement such a policy and its guidelines.

69. The Under-Secretary-General congratulated the Working Group on mercenaries on the comprehensive nature of its report to the General Assembly (A/69/338) and expressed sincere appreciation for the opportunity to express views on its content. He referred to the measures undertaken pursuant to one of the report's recommendations, namely to extend the United Nations Security Management System Policy Manual to unarmed private security companies. In line with that recommendation, the Inter-Agency Security Management Network recognized the importance of further clarifying the United Nations position on the use of unarmed private security companies, and thus endorsed the establishment of a working group on the subject. In March 2015, the unarmed private security services working group had been formally established, had agreed upon its terms of reference and taken initial steps in determining the need for a separate policy and related guidelines relating to the use of unarmed private security services.

70. The Under-Secretary-General pointed out that there was arguably more to be done in terms of how the existing United Nations Security Management System Policy Manual and related Guidelines were implemented at the operational and tactical levels. In that regard,

[17] Available from www.ohchr.org/Documents/HRBodies/HRCouncil/WGMilitary/Session4/UNSecurityPolicyManual.pdf.

[18] Available from www.ohchr.org/Documents/HRBodies/HRCouncil/WGMilitary/Session4/GuidelinesUseArmedSecurityServices.pdf.

one of the greatest challenges was to ensure that the contracted private security companies had adequate internal oversight and accountability mechanisms, including complaint and performance reporting mechanisms, as recommended by the Working Group on mercenaries. Given current resource constraints, the United Nations had yet to allocate additional resources for establishing external monitoring mechanisms in order to ensure the proper execution of a given contract, and accountability of contracted companies and personnel with respect to improper or unlawful conduct. He also noted that, at the policy level, the main gap lay in the lack of an international normative framework on the use of private security companies, whether armed or unarmed. He stated that that issue could not be addressed by a single or even multiple international organizations. Key actors — including States in which private security companies were based or operated and the private armed security companies themselves — must also be involved in a formal process whereby a common and internationally agreed upon normative framework could be established.

71. In the discussion that followed, delegations raised questions about: (a) the number of countries in which the United Nations had engaged unarmed private security companies; (b) the involvement of private security companies in peacekeeping operations and whether any further increase in their involvement could be anticipated in the light of their greater use by States; and (c) whether there was a risk that companies contracted by the United Nations would participate directly as combatants or might be involved in interrogation or detention of prisoners of war.

72. The Under-Secretary-General replied that currently the United Nations employed unarmed security companies in 10 missions of the Department of Peacekeeping Operations, in 11 special political missions and in its support bases in Kenya and Spain, among others. He expressed the hope that there would be no need to increase their use, while noting the security and safety situation in which the United Nations operated. Such a decision was not taken lightly and would be a matter of last resort on the basis of security risk assessment and on the advice of the security team in the mission concerned. Finally, the Under-Secretary-General confirmed that private security companies employed by the United Nations neither participated directly as combatants nor were they involved in interrogation or detention of prisoners of war. The principal role of private security companies was the protection of United Nations personnel, premises and assets.

73. One delegation noted that while States might have different views on contracting private security companies, all States were part of the United Nations and probably recognized that their use by the Organization had become a practice, if not a necessity, for it to operate in certain situations. With reference to oversight and accountability, the delegation asked for further information on instances in which the United Nations had been called upon to take steps to prevent abuses and facilitate access to remedy.

74. In his response, the Under-Secretary-General reiterated that all measures were taken to ensure that international humanitarian law and human rights law were observed. Since his appointment and in the prior handover period, no abuses had been brought to light. There was a monthly review and Department of Safety and Security personnel had day-to-day responsibility for oversight. Furthermore, the process of recruitment was stringent and designed to minimize all abuses. Should any abuses occur, they were brought to the attention of the Under-Secretary-General.

75. The Chair-Rapporteur enquired about the possibility of sharing United Nations experience in using unarmed security companies, and its detailed standards and guidelines, as a basis for discussion and possible use by States. He also queried the extent to which, and under what conditions, national contingents of peacekeeping missions were allowed to use private military and security companies. One delegation asked about the security situation facing other humanitarian actors, and what collaboration the United Nations had

with actors in challenging security environments. In response, the Under-Secretary-General mentioned close collaboration with States and referred to a colloquium in June 2015 to share experiences, including on delivery of security. He also clarified that the United Nations employed private security companies and not private military companies. Finally, he pointed out that the United Nations collaborated with international non-governmental organizations in complex and challenging security environments, including in the Syrian Arab Republic and Yemen.

IV. Concluding remarks

76. **On 1 May 2015, the Chair-Rapporteur thanked the delegations and expressed gratitude to the experts for their excellent contributions. He mentioned the increased use of private military and security companies in various sectors and contexts, both on land and at sea. Specific challenges discussed included: jurisdiction issues linked to "flags of convenience"; weapons storage in the context of "floating armouries" in international waters, including possible circumvention of national laws limiting the import and export of weapons; ensuring that private military and security companies respected applicable national legislation; and challenges relating to international cooperation in legal matters, in particular mutual legal assistance.**

77. **The Chair-Rapporteur suggested that the open-ended intergovernmental working group consider including the following text as part of its conclusions and recommendations:**

> **[Paragraph 1] The intergovernmental working group noted the multifaceted and diverse issues raised throughout its third and fourth sessions. These included: the distinction between the activities of private military companies and private security companies; measures for registering, licensing and contracting private military and security companies; ensuring accountability and provision of assistance and remedies for victims; possibility of an international regulatory framework; specificities of regulating sea-based private security activities; and the use of private security companies by the United Nations. The intergovernmental working group noted the initiatives undertaken by various stakeholders relating to those issues, while highlighting the challenges that remain.**
>
> **[Paragraph 2] Different views were offered as to how to achieve the shared goal of protecting human rights and ensuring accountability for violations and abuses relating to the activities of private military and security companies. Some delegations proposed that the intergovernmental working group begin elaborating a legally binding instrument for the regulation, monitoring and oversight of private military and security companies, and submitted elements of a draft convention for the consideration of the intergovernmental working group. Other delegations proposed the consideration of the range of options to be explored to further develop an international regulatory framework, including international standards setting and development of guidelines, possibly actions plans or model laws, contract templates based on the Montreux Document, good practices and mutual legal assistance programmes.**
>
> **[Paragraph 3] Taking account of Human Rights Council resolution 28/7 of 26 March 2015, the intergovernmental working group will continue its work on the above-mentioned issues and also recommends further consideration of human rights issues relating to, inter alia, (a) the operation of private military and security companies in the maritime context; (b) the use of private military**

and security companies by humanitarian actors; and (c) access to justice and remedies for victims of violations and abuses linked to the activities of private military and security companies.

78. The Chair-Rapporteur regretted that, despite the approval expressed by some delegations, the second and third paragraphs had not found consensus.

79. The concluding remarks of the European Union and the African Group are reproduced, in annex II and III respectively, in the language of submission only.

V. Conclusions and recommendations

80. The open-ended intergovernmental working group noted the multifaceted and diverse issues raised throughout its third and fourth sessions. These included: the distinction between the activities of private military companies and private security companies; measures for registering, licensing and contracting private military and security companies; ensuring accountability and provision of assistance and remedies for victims; possibility of an international regulatory framework; specificities of regulating sea-based private security activities; and the use of private security companies by the United Nations. The intergovernmental working group noted the initiatives undertaken by various stakeholders relating to those issues, while highlighting the challenges that remain.

81. The open-ended intergovernmental working group will continue its work on the above-mentioned issues and also recommends further consideration of related human rights issues.

Annex I

[*English only*]

List of participants

States Members of the United Nations

Algeria, Argentina, Australia, Bangladesh, Belgium, Brazil, Colombia, China, Cuba, Egypt, France, Germany, Greece, Guatemala, India, Iran (Islamic Republic of), Ireland, Italy, Japan, Jordan, Kazakhstan, Latvia, Libya, Luxembourg, Mexico, Morocco, Namibia, Norway, Pakistan, Panama, Paraguay, Republic of Korea, Russian Federation, Saudi Arabia, Senegal, South Africa, Spain, Sri Lanka, Sudan, Switzerland, Syrian Arab Republic, Thailand, Tunisia, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela (Bolivarian Republic of), Viet Nam

Non-member States represented by an observer

State of Palestine

United Nations funds, programmes, specialized agencies and related organizations

World Trade Organization

Intergovernmental organizations

African Union, European Union

Other entities

International Committee of the Red Cross

Special procedures of the Human Rights Council

Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination

Non-governmental organizations in consultative status with the Economic and Social Council

American Association of Jurists, Colombian Commission of Jurists, Centre for Socio-Economic Development

Annex II

[*English only*]

Concluding remarks by the European Union

The European Union would like to thank the Chair and the Secretariat for the work in preparation of this session and during the session.

The European Union believes that private security companies need to respect international humanitarian law and international human rights law.

The European Union has actively and constructively engaged in the discussion of this intergovernmental working group over the past four years. Several presentations during this session were particularly informative and confirm that this industry is complex, and evolving. The presentations also confirm that many steps have already been taken to prevent abuses, and provide remedy when abuses occur. A range of obligations for States already exists, as well as several processes to set new standards, to elaborate concrete guidance for specific sectors, and to ensure oversight and accountability.

The discussion confirmed the specificities of regulating sea-based private security activities and the need to look into progress made in other fora. It is particular important not to duplicate the work carried by the International Maritime Organization (IMO). IMO has a leading role on this issue.

The European Union is prepared to consider other options, and has come forward with a set of possible action oriented recommendations to ensure that this intergovernmental working group can progress in its deliberations. The European Union would like to share with the plenary its proposed recommendations, as circulated on the third day of this session and presented during the informal consultations on the fourth day :

> In view of the substantive discussions held during the past sessions of the open-ended inter-governmental working group, and in light of the complexities of the issues, it recommends to the Human Rights Council the following:
>
> (a) Continuation of the substantive discussions in the intergovernmental working group with the participation of experts and all relevant stakeholders to take stock of progress at the national and international levels — including in widening the support to the Montreux Document and its Forum, and the development of the International Code of Conduct Association — regarding the regulation, monitoring and oversight of the activities of Private Military Companies and Private Security Companies;
>
> (b) Review the implementation of the Guiding Principles on Business and Human Rights, with particular emphasis on the third pillar regarding access to remedies, in the case of the activities carried out by private military companies and private security companies;
>
> (c) Consideration of the range of options to be explored to further develop an international regulatory framework, including international standards setting, development of guidelines, possibly actions plans or model laws, contract templates based on the Montreux Document, good practices and mutual legal assistance programmes;

(d) Consideration of the tasking of a high-level group of legal experts/the Office of the United Nations High Commissioner for Human Rights to prepare a document for consideration at the fifth session to outline the modalities for each possible option, drawing when possible on past experience.

The European Union showed willingness to work on a compromise which would have allowed this intergovernmental working group to agree on a set of solid and action oriented recommendations. The European Union would like to thank delegations from across regions who offered compromise language, and regrets that other delegations insisted on language which clearly would never allow for consensus. The European Union further regrets that some delegations called inter alia for the deletion of the paragraph referring to the implementation of the Guiding Principles on Business and Human Rights and in particular to the third pillar on access to remedies. The European Union is committed to the implementation of the Guiding Principles on Business and Human Rights and hopes that all States are also committed to their implementation.

Finally, the European Union would like to refer to the important role of civil society organizations and human rights defenders who are actively engaged in this area of work.

I thank you Mr. Chair.

Annex III

[*French only*]

Déclaration et observations finales du Groupe africain

Le Groupe africain regrette que le Groupe de travail ne soit pas parvenu au consensus eu égard à l'importance de cette question et le Groupe africain regrette qu'il n'y ait pas eu de consensus au cours de cette session.

Le Groupe africain souhaiterait encore une fois réitérer l'importance qu'il attache au mandat de ce groupe de travail qui selon le Groupe doit se focaliser sur l'élaboration d'un instrument international à caractère contraignant. La nécessité et l'opportunité et les éléments qui peuvent constituer ledit instrument ont fait à notre avis l'objet de présentations détaillées au cours de la semaine écoulée ainsi qu'au cours des sessions précédentes. A ce titre, le Groupe de travail sur l'utilisation de mercenaires comme moyen de violer les droits de l'homme et d'empêcher l'exercice du droit des peuples à disposer d'eux-mêmes a été explicite à ce sujet et ce, en soulignant que la manière la plus efficiente d'adresser cette question devrait se faire par le biais d'un instrument international à caractère contraignant. Cela permettrait sans nul doute de prendre en charge les violations des droits de l'homme et la question de reddition de comptes.

Le représentant [des sociétés de sécurité privées] a mis en avant clairement l'opportunité d'élaborer un instrument international à caractère contraignant. Le représentant des Nations Unies également n'a pas fait d'intervention qui était contraire à l'opportunité de travailler sur un instrument. Je pense que cela a été dit au cours de nos différentes discussions qui se sont tenues dans le cadre de ce groupe de travail aussi bien de la part du Groupe africain que de la part d'un certain nombre de délégations.

Pour le Groupe africain, nous appelons ce groupe de travail à poursuivre ses travaux dans le cadre du mandat qui a été mis en place et qui consiste en l'élaboration d'un instrument international à caractère contraignant.

United Nations A/HRC/30/48

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Human Rights Council
Thirtieth session
Agenda item 4
Human rights situations that require the Council's attention

Report of the Independent International Commission of Inquiry on the Syrian Arab Republic

Summary

With no end in sight, the Syrian conflict has continued to intensify. Civilians, Syrians of all backgrounds, have been the subject of crimes against humanity and war crimes, as well as other serious violations of international humanitarian law and gross violations of their human rights. These transgressions are massive in extent and scope.

Within the overall civilian population, groups and communities have been specifically targeted by one or more of the warring parties. Furthermore, there are groups and communities on which the war has left a distinct mark. Often individuals suffer on the basis of multiple aspects of their identity, including their gender, age, ethnicity, religion and profession.

Civilians are suffering the unimaginable, as the world stands witness. Without stronger efforts to bring parties to the peace table, ready to compromise, current trends suggest that the Syrian conflict – and the killing and destruction it wreaks – will continue for the foreseeable future.

From the interviews gathered by the Independent International Commission of Inquiry on the Syrian Arab Republic, a resonant cry for peace and accountability rings out. It is the responsibility of the warring parties and influential States to seek peace, and the particular obligation of the Security Council, in the context of the war in the Syrian Arab Republic, to open a path to justice.

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I. Introduction

1. In the present report, submitted pursuant to Human Rights Council resolution 22/24, the Independent International Commission of Inquiry on the Syrian Arab Republic presents its findings based on investigations conducted from 10 January to 10 July 2015.[1] This report should be read in conjunction with previous reports of the Commission.[2]

A. Challenges

2. The Commission's investigations remain curtailed by the denial of access to the Syrian Arab Republic.

B. Methodology

3. The methodology employed by the Commission was based on standard practices of commissions of inquiry and human rights investigations. The commission relied primarily on first-hand accounts.

4. The information contained herein is based on 335 interviews conducted in the region and from Geneva. Since September 2011, 3,840 interviews have been conducted by the Commission.

5. Photographs, video recordings, satellite imagery and medical records were collected and analysed. Reports from Governments and non-governmental sources, academic analyses and United Nations reports formed part of the investigation.

6. The standard of proof is met when the Commission has reasonable grounds to believe that incidents occurred as described.

II. Conflict dynamics

7. With no end in sight, the Syrian conflict has continued to intensify across an increasing number of complex and often unpredictable frontlines. Benefitting from support provided by a variety of external backers, including States and individuals, warring parties have battled vehemently to expand geographically. This has repeatedly brought chaos and destruction to new localities hosting local communities and internally displaced persons (IDPs). Simultaneously, sporadic but persistent fighting and bombardment also occurred in multiple low-scale and static battlefields, where involved actors lack the necessary manpower and supplies to break the stalemate.

8. None of the belligerents seem either close to collapse or positioned to secure an outright military triumph. After more than four years of fighting, all have secured sufficient support channels, territorial gains and operational capabilities to sustain them for several more years. Without stronger efforts to bring parties to the peace table, ready to compromise, current trends suggest that the Syrian conflict – and the killing and destruction it wreaks – will continue for the foreseeable future.

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[1] The commissioners are Paulo Sérgio Pinheiro (Chair), Karen Koning AbuZayd, Vitit Muntarbhorn and Carla Del Ponte.

[2] A/HRC/S-17/2/Add.1, A/HRC/19/69, A/HRC/21/50, A/HRC/22/59, A/HRC/23/58, A/HRC/24/46, A/HRC/25/65 and A/HRC/27/60.

9. While fought mostly by Syrians and largely contained within Syrian territory, the war is increasingly driven by international and regional powers, primarily in accordance with their respective geostrategic interests. Syrian stakeholders, on all sides of the conflict, have gradually lost control over the course of events due to a variety of external factors that have obscured the internal dimension of the war. As the war endures, it displays worrying signs of becoming internationalized. The competition among regional powers for influence has resulted, among other consequences, in an alarming exacerbation of the sectarian dimension, instigated by the intervention of foreign fighters and extremist clerics.

10. Government forces[3] have struggled against mounting military pressure by anti-Government armed groups, as well as Jabhat Al-Nusra and Islamic State of Iraq and al-Sham (ISIS), successively losing strategic localities and military positions in several governorates. Unable to advance during most of their recent attacks in Aleppo and southern Dara'a, Government forces have also failed to prevent the collapse of their external defensive lines during offensives by ISIS and other armed groups in strategic areas such as eastern Homs and Idlib.

11. As recognized by President Bashar al-Assad in his July televised address, shortages in loyal manpower, combined with the proliferation of highly active fronts, have constrained Government forces' ability to react simultaneously throughout the country. As a result, the Government has prioritized highly strategic areas such as Damascus, coastal governorates, and communication lines along the Lebanese borders, the only international borders they still control. Besides continuing aerial bombardments, Government forces relied heavily and regularly on Hezbollah and other foreign Shia militia. In particular, elite units including the Republican Guard and the 4th Division have been significantly affected by casualties and war attrition.

12. Anti-Government armed groups, ranging from Free Syrian Army (FSA) affiliates to groups such as Ahrar Al-Sham, made important tactical gains along frontlines with Government forces in Idlib, Dara'a and Aleppo governorates. While intermittently fighting ISIS and its allies in northern Aleppo countryside and southern Damascus, they have increasingly collaborated with Jabhat Al-Nusra and groups such as Ansar Al-Deen and Jund Al-Aqsa, apparently prioritizing present operational necessities over ideological and political divergences.[4]

13. Significant improvements in coordination and access to logistical support have contributed to enhanced overall operational performance, leading to fresh advances. Divisions over ideology and politics, as well as infighting over resources and territory, persist and may continue to undermine unity and coherence within their ranks in the future.

14. Jabhat Al-Nusra, the Syrian affiliate of Al-Qaida, has played a key role during armed groups' recent gains in Idlib, where it regularly operates in close proximity with groups from different ideological backgrounds. Composed mainly of Syrian militants – in contrast to ISIS – it has reinforced its hold on large parts of Idlib governorate, devolving resources and efforts on local governance. With a particular focus on putting security and

[3] The term "Government forces", unless specified otherwise, includes the Syrian Armed Forces, intelligence forces and associated foreign and local militias, including Hezbollah, the *shabbiha*, popular committees and National Defence Forces.

[4] While in some Syrian governorates, Jabhat Al-Nusra has undertaken major operations in concert with anti-Government armed groups, these coalitions generally arise out of operational necessity rather than genuine ideological engagement. In all references to Jabhat Al-Nusra in this report, the Commission continues to regard the group as a terrorist entity as designated by Security Council resolution 2170 (2014).

justice mechanisms in place, the group has consolidated its influence over communities, imposing its extremist ideology.

15. Relations between Jabhat Al-Nusra and ISIS have been characterized mainly by distrust and conflict. They have clashed predominantly over control of resources, despite rare instances of collaboration in isolated fronts such as Al-Yarmouk camp in Damascus city, and the western Qalamoun area in Rif Damascus.

16. ISIS has consolidated its influence over large parts of northern and eastern governorates while dramatically escalating its attacks targeting Government forces' positions and towns in Homs and Hasakah governorates. The terrorist group has also expanded into new areas in the centre and the south as far as Dara'a and Suweida governorates by absorbing new loyalties among local militant groups operating far beyond its strongholds.

17. Following significant losses in Raqqah at the hands of the Kurdish armed group, the People's Protection Units (YPG), ISIS adopted a new modus operandi incorporating extensive use of suicide vehicle-borne improvised explosive devices and hit-and-run tactics. The international coalition against ISIS has recently expanded, strengthening its capacity to fight ISIS. Its airstrikes, however, have degraded the group's operational performance only when conducted alongside YPG ground operations.

18. The YPG – supported by local armed groups and the international coalition airstrikes – have advanced in north-eastern Syrian governorates. After clearing the canton of Ayn Al-Arab/Kobane[5] (Aleppo), they seized the border crossing of Tal Abyad (Raqqah) in a significant victory against ISIS, connecting Kobane and Al-Jazire into a contiguous zone.

19. Providing most of the fighting forces, the YPG has fought on different fronts alongside a variety of armed groups including Arab tribes, Assyrian militia, and FSA-affiliated factions. Geographically, YPG forces have advanced recently into Arab-dominated areas beyond Kurdish territories, stirring resentment among some local communities.

20. In an effort to bring warring parties to the negotiating table, United Nations Special Envoy Staffan de Mistura submitted a new proposal to the Security Council on 29 July, aimed at reaching a Syrian-owned framework document on the implementation of the 2012 Geneva Communiqué. After extensive consultation with belligerents and influential States, the Special Envoy proposed the formation of four subject-specific working groups which would address the following themes: "safety and protection for all"; "political and constitutional issues"; "military and security issues"; and "public institutions, reconstruction and development".

21. The uninterrupted flow of refugees into neighbouring countries continues to destabilize the region and severely affect the livelihoods, public services and availability of basic commodities in the hosting communities. These economic and social challenges, compounded by security concerns, have prompted neighbouring countries to adopt border management measures which, in the words of High Commissioner for Refugees Antonio Guterres, "limit refugees' chances of reaching safety".

22. The protection space for Syrians trying to escape the conflict is steadily shrinking. Serious funding shortfalls endanger the lives of the most vulnerable segments of Syria's displaced population.

[5] Hereinafter referred to as "Kobane".

III. Impact of the Syrian conflict on various civilian groups and communities

23. Civilians continue to be the main victims of the Syrian conflict. As violence has engulfed their lives, schools and neighbourhoods, civilians have fled to dwindling safe havens inside the Syrian Arab Republic, or over its borders.

24. Within the overall civilian population, some groups and communities have been specifically targeted by one or more of the warring parties. Furthermore, there are groups and communities on whom the war has a distinct impact. Often individuals suffer on the basis of multiple aspects of their identity, including their gender, age, ethnicity, religion and profession. An attack on a civilian population may particularly affect or be directed towards civilian women, or indeed, civilian women of a particular ethnicity, for example. Such is the reality of the war in the Syrian Arab Republic.

25. The present report examines the impact of the Syrian conflict on some of the most affected groups and communities. It does not, however, offer an exhaustive list – an impossibility given the richness of the Syrian mosaic.

A. Civilians

26. Warring parties conduct hostilities with little, if any, regard for the laws of war and, in particular, its foundational principle of distinction. Regardless of the belligerent involved, the majority of attacks are not directed at a specific military objective or fail to employ a method or means of combat that can be directed at a specific military objective. Indiscriminate attacks on residential areas have led to massive casualties among Syrian civilians.

27. Government forces (including paramilitary and foreign and local supporting militia), anti-Government armed groups, Jabhat Al-Nusra and ISIS all locate military objectives within or near densely populated civilian-inhabited areas, endangering the civilian population.

1. Ground attacks

28. As warring parties advanced, they undertook ground attacks on civilian-inhabited villages on frontlines. In the ground attacks detailed below, Government forces, anti-Government armed groups, Jabhat Al-Nusra and ISIS have killed civilian residents.

29. In mid-February, Government forces entered Hardetein village (Aleppo). Civilians were shot and killed as they fled.

30. Government forces entered Busr Al-Hareer, Miskiya Al-Sharqiya, Miskiya Al-Gharbiya and Musetba villages in the Dara'a countryside in April. While the area was under the control of the FSA, fighters were not present at the time of the Government's advance. Government forces killed approximately 40 men and injured 60 others.

31. In March, anti-Government armed groups, fighting alongside Jabhat Al-Nusra, attacked and overran Busra Al-Sham (Dara'a), killing male and female residents. Acting in concert with Jabhat Al-Nusra, armed groups attacked Ishtabraq (Idlib) in April, killing fleeing civilians. In mid-June, Jabhat Al-Nusra fighters executed 24 men in Qalb Lawza (Idlib).

32. ISIS executed civilians during its February offensive against Assyrian villages along the Khabour River (Hasakah), including Tel Hermes, Tel Shamran, and Qabr Shamie. At the end of March, it attacked Mabouja (Hama). From 25-27 June, the terrorist group also

launched an attack on Kobane, killing approximately 250 civilians. These attacks are detailed in Section H below.

2. Aerial bombardments and shelling

33. The Government has continued aerially bombarding civilian-inhabited localities. Areas of Aleppo, Dayr Az-Zawr, Idlib, Damascus and Dara'a have come under intense attack, leading to widespread civilian casualties.

34. Some attacks were directed towards civilian gathering places, specifically markets and transport hubs. In early February, bus gathering points in Baidin and Al-Hayderia neighbourhoods of Aleppo city were hit with barrel bombs, killing civilians. In May, the Government launched an airstrike on Jisr Al-Haj, where buses and taxis collect passengers in Aleppo city. Approximately 40 people were killed. The majority were civilians, including several children.

35. In May, Government helicopters dropped multiple-barrel bombs on three markets in ISIS-controlled Al-Bab, in northern Aleppo. ISIS was not present inside the markets, which sold vegetables, women's clothing and agricultural equipment, respectively. In early June, a Government helicopter dropped a barrel bomb on Jib Al-Quba food market, in Aleppo city. The attack resulted in civilian casualties. There were no military objectives in the market.

36. Anti-Government armed groups have shelled civilian-inhabited towns and neighbourhoods in Aleppo, Damascus, Idlib and Latakia. Government-controlled neighbourhoods in Aleppo city remain under regular bombardment from armed groups. In early May, an unidentified armed group fired a rocket into Al-Mougambo neighbourhood, killing nine civilians. Armed groups periodically cut water to Government-held Aleppo city.

37. Anti-Government armed groups continue to fire rockets and mortars into the Jaramana and Sayda Zeinab neighbourhoods of Damascus city, resulting in many civilian casualties. Prior to the ground attacks in Dara'a and Idlib, anti-Government armed groups and Jabhat Al-Nusra indiscriminately shelled villages as they advanced.

38. In April, the international coalition launched an airstrike on Beir Mihli (Aleppo), located along a frontline between the YPG and ISIS. It remains unclear what military objectives were present in the village, but the number of civilian casualties – reportedly over 60 people – is of serious concern. Similarly, in a coalition airstrike on Dali Hasan (Aleppo) in June, a family – including five children – was killed. The military objective is still to be clarified.

39. Investigations are continuing into the alleged use of chemical weapons, in the form of chlorine and/or phosgene gas, in Sermin, Saraqib, Qmenas and Binish, as well as other towns and villages in Idlib in March and April.

B. Fighting-age men

40. While few civilians have been left unscathed by the continuing brutality of the Syrian war, it is civilian men who make up the largest community of victims. Civilian men perceived to be of fighting age have been targeted by warring parties during ground

attacks.[5] They are also the primary civilian victims of enforced disappearance, torture and unlawful killing.

41. Consistent with previously documented patterns, men – particularly those with identification cards showing them to be from restive areas – are arbitrarily arrested by Government forces. This happened most frequently at checkpoints in Government-controlled areas of Damascus and Aleppo cities, as well as on the main routes linking Damascus and Dara'a governorates. Countless men remain detained due to activities relating to their exercise of freedom of expression or assembly. Others appear to have been detained to pressure family members wanted by the authorities, rendering their detention unlawful.

42. While enforced disappearances were first documented during the March 2011 protests, subsequent investigations uncovered a countrywide pattern in which mainly adult male civilians have been seized by Government forces and disappeared.

43. Most former detainees interviewed by the Commission are adult men. Their treatment is detailed in Section F, below.

44. The Government's ubiquitous checkpoints have vastly limited the freedom of movement of men seeking to leave opposition-held areas. Civilian men are effectively trapped in areas in which there may be heavy clashes or intense aerial bombardments. Even in calmer areas or periods, the specific threats posed to civilian men from Government checkpoints have prevented them from accessing work and therefore, from being able to provide for their families. Multiple accounts have been documented of women leaving their husbands behind in opposition-held areas to accompany their pre-adolescent sons through the checkpoints and out of the area before they reach an age where they are likely to be stopped by Government forces.

45. The Government's recent campaign of conscripting men into its armed forces has further inhibited the movement of adult men to and within Government-held areas.

46. The majority of those executed by ISIS are adult men. In many instances, ISIS declared the men to be captured fighters or civilian collaborators with Government forces or other armed groups as a justification for murdering them.

47. ISIS has also forcibly recruited men and boys. As the group's control over the Dayr Az-Zawr countryside has solidified, ISIS reportedly demanded that each family send at least one son to fight with the group.

48. In ISIS-controlled areas, specific rules apply to men. These are less restrictive than the rules applying to women and girls over the age of 10, but include a dress code, having a beard of a particular length, and attending Friday prayers at the mosque. Failure to abide by these rules frequently results in lashing. Men found in the company of women to whom they are not related risk a charge of adultery, punishable by death.

C. Women

49. Throughout the unrest and conflict in the Syrian Arab Republic, women and girls have been targeted on the basis of their gender.

[5] As documented in the Commission's previous reports, those treated as being of fighting age include boys under the age of 18 years. The treatment of male minors, including the violations committed against them, is covered in Sect. D (Children), below.

50. Women have also been targeted because of their familial links, actual or assumed, with male members of opposing warring parties. For the belligerents, the very act of detaining a woman, with all the risks to her person that this implies, appears designed to humiliate not only the woman, but also – and arguably, primarily – her male relatives.

51. Government forces have arrested female lawyers, journalists and peace activists and those expressing anti-Government sentiments. Women have also been detained in order to force the surrender of male relatives suspected of fighting with, or otherwise supporting, anti-Government armed groups.

52. Female detainees are imprisoned in squalid, insect-infested cells and subjected to torture and inhuman treatment, as detailed in Section F. Medical care, if available at all, is inadequate. In particular, no care is taken to address women's distinct medical and physiological needs.

53. Women have suffered rape and other forms of sexual violence by Government personnel while held in detention facilities. Sexual assault has also been committed by Government forces at checkpoints. That women can move more freely than men in Government-held areas has increased their vulnerability to physical and sexual assault, by Government forces and by criminal elements within the civilian population.

54. The Government's campaign of arrests and disappearance of fighting-age men has had acute economic and social effects on the women left behind. The mental anguish that women endure as a result of the disappearance of their male relatives is a human rights violation in itself. Beyond this, female relatives are often left with no means of supporting themselves or their children. Without confirmation of death, they are in legal limbo, unable to inherit or sell property, or to remarry.

55. Anti-Government armed groups have kidnapped women in order to effect prisoner exchanges for women and fighters detained by the Government.

56. Approximately 100 women and children were taken hostage by a coalition of armed groups, including Jabhat Al-Nusra and Ahrar Al-Sham, during an attack on Alawite villages in Latakia countryside in August 2013. The hostages (at least half of whom were minors) received limited medical treatment and food. Three elderly women died of treatable ailments while detained. Approximately 40 have been released in prisoner exchanges so far.

57. In recent months, Jabhat Al-Nusra assumed control of some towns and villages in the Idlib countryside. Reports are emerging from Maarrat Misrin about the group's restrictions of personal freedoms, including a requirement that women cover their hair. Two women were reportedly executed in January 2015 in Maarrat Misrin and Hafsarjah, following a local Sharia court's finding that they had committed adultery.

58. Since ISIS emerged as a force in early 2013, cases of women being stoned to death have been documented. Often accused of having committed adultery, it appears that many were executed for assisting fighters of other groups or for continuing professional activities. In so doing, women came into contact with men to whom they were not related.

59. As detailed in Section H, ISIS continues to hold Yazidi women and girls captive in sexual slavery. The terrorist group has also forced Sunni women and girls into marriages with its fighters.

60. ISIS has removed women and girls from public life and placed them entirely under the control of male relatives. Women and girls over the age of 10 may not appear publicly without being entirely covered, and may not travel without a close male relative. It is impossible for women whose husbands have died, fled, or are at the battlefront, to leave their homes for any reason without risking punishment.

61. These rules are punishable by lashing, which is often administered by Al-Hisbah, ISIS' morality police. An all-female unit of Al-Hisbah, Al-Khansaa, is sometimes responsible for the lashing of women.

62. ISIS' rules against the mixing of the sexes have adversely impacted women and girls' ability to access health care. Many doctors fled ISIS-controlled areas in 2013, and there are very few female doctors present in the region. Consequently, specialist care for women and girls is extremely limited.

63. Sieges and the denial of humanitarian assistance have had a distinct impact on women. Lack of food and medical care has adversely affected the health of pregnant women and nursing mothers, as well as contributing to a rise in infant mortality.

64. While women continue to be the subject of violations – including being targeted based on their gender – to regard women solely as victims is to misunderstand the important and often overlooked female experience of the ongoing war.

65. Women make up more than half of Syrian refugees and IDPs. This is due to adult men being away fighting, or having been killed or disappeared. Where families remain intact, adult men from restive areas or from communities perceived to be in support of an opposing faction are often unwilling to move due to fears of arrest, detention or summary execution at checkpoints. Consequently, over the course of the conflict and outside of ISIS-controlled areas, the Syrian Arab Republic has seen a rise in female-headed households. Despite confronting great difficulties, women are often the primary caregivers and providers for their children.

66. Within the YPG, women make up an essential part of the Kurdish frontline fighting forces. In other areas of the Syrian Arab Republic, women risk their lives to aid their families and communities, for instance by smuggling food and medicine into areas besieged by the various parties to the conflict.

67. Women have become powerful voices in advocating for the political resolution of the conflict, though they remain absent from the conferences where high-level diplomatic discussions have taken place. It is essential that women participate fully in current and future political negotiations. The distinctly female experience of a war primarily waged by men must form part of the discussion of how to achieve peace and justice in the Syrian Arab Republic.

D. Children

68. Syrian children's lives have been blighted by the war's brutality. An untold number have suffered the same violations as adults, without discrimination. Parties to the conflict continue to recruit and use children in the conduct of hostilities.

69. ISIS has executed children in Hasakah, Raqqah and Dayr Az-Zawr. In May, ISIS executed a family, including minors as young as 14, in a village in Dayr Az-Zawr. Residents, including children, were made to watch. ISIS has also forced children into the role of executioner. The terrorist group has released videos showing a firing squad of children executing captured men in Palmyra, as well as of a 10-year-old cutting the throat of a captured soldier in Homs.

70. Thousands of children have been killed and injured in the Government's indiscriminate aerial bombardments on Aleppo, Damascus, Dara'a, Idlib and Dayr Az-Zawr. In May, a barrel bomb hit Al-Rajaa school in a residential neighbourhood of Aleppo city. There were no military positions in the area. At least five children, and several teachers, were killed.

71. Indiscriminate mortar and rocket fire by anti-Government armed groups has killed and maimed children in Aleppo and Damascus cities, as well as in Latakia and Idlib governorates. Some schools, such as Abdulrahman Al-Khazen school in Al-Fahamy (Damascus), moved classes into basements after Jaish Al-Islam launched mortar shells on the capital in February.

72. Boys considered to be of fighting age continue to be held at Government checkpoints. Once held, children are imprisoned with adults and tortured in Government detention centres. They suffer the same inhumane conditions of detention as described in Section F. The presence of male and female detainees as young as 11 was recorded in Security Branches 227, 235, 248 and 215 in Damascus. Children have been tortured and the rape of minors was reported in Branches 235 and 215.

73. As detailed in Section H, ISIS has sexually enslaved thousands of female Yazidis, a large proportion of whom are under the age of 18. Additionally, the group has forced Sunni Arab girls into marriages with its fighters.

74. ISIS kidnapped children, along with their mothers, during attacks on multiple Assyrian villages in February, and from Mabouja, in late March. Children and women were taken hostage by Jabhat Al-Nusra following the attack on Ishtabraq in late April. Children reportedly have been detained by Jabhat Al-Nusra and tortured in Harim prison (Idlib).

75. ISIS continues to recruit and train boys as young as six in the use of weapons. Yazidi boys, abducted from Sinjar in northern Iraq in August 2014, were brought into the Syrian Arab Republic and separated from their mothers. They are trained alongside underage Syrian boys. Reports of youth training camps known as "cub camps" continue to emerge from Dayr Az-Zawr and Hasakah.

76. Jabhat Al-Nusra also reportedly engages children in military activities. In March and April, minors were seen manning checkpoints and carrying weapons in Idlib.

77. Children are one of the groups most affected by sieges. Of those who have died of malnutrition or dehydration, the majority are young children.

78. Lack of access to medical care, whether as a result of deliberate obstruction or the vagaries of war, has profoundly affected children. There is little care available to more vulnerable newborns and vaccination programmes continue to be affected negatively by the conflict. Injured children, like adults, suffer due to a lack of medical supplies. One interviewee witnessed a doctor operating on a 7-year-old child without anaesthesia in Jisr Al-Shughour in April. He described the child as being in such pain that "he was beyond crying".

79. Children are being denied access to education. As bombardments of schools increase, so too do reports of the use of schools as military facilities. The Government's placing of weaponry on schools in Jaramana is currently under investigation. In Fajroh village (Hama), ISIS established its headquarters in a school. Additionally, schools in Aleppo and Dara'a have ceased to function as they became shelters for IDPs.

80. As a result of repeated exposure to violence and insecurity, children throughout the Syrian Arab Republic are exhibiting symptoms of trauma, including psychological and behavioural disorders, as well as post-traumatic stress. The protracted duration of the conflict is weakening these children's resilience.

E. The displaced

81. The brutality of the conflict continues to generate unprecedented levels of displacement. With more than 4 million refugees and some 7.6 million IDPs, half of the Syrian Arab Republic's population has now been uprooted.

82. Many Syrians IDPs now live in official or makeshift camps that dot the Syrian Arab Republic's borders. Others have taken up residence in towns and villages where they have family ties, or where they have been able to find shelter in a place of relative safety.

83. The majority of the displaced are women and children. This is a consequence of their being able to move more freely through checkpoints, save for those areas controlled by ISIS. Many have been repeatedly displaced. Some have fled bombardments or ground attacks. Others moved in search of family members and better living conditions, including employment and more readily available – or affordable – food and fuel.

84. For those who have moved into towns and villages, many have been taken in by residents. Fellow Syrians remain the primary providers of assistance to IDPs. However, in some localities, such as Azaz (Aleppo), the sheer number of IDPs seeking safety has increased tensions between them and residents as the growing demand for basic supplies inflates local prices.

85. In makeshift camps, the internally displaced receive little or no support. Shelters are haphazardly built and often fail to keep out the elements. Health services and education for children are largely absent. In official camps, sudden influxes of IDPs fleeing violence may overwhelm services, as reportedly occurred in camps in Idlib following clashes in April and May between Government forces and anti-Government armed groups fighting alongside Jabhat Al-Nusra.

86. Camps are often places of insecurity. Concern for the safety of female family members, together with the cost of caring for large families, has led to an increase in early marriages in the camps. This has follow-on consequences for the education, health and life prospects of the Syrian Arab Republic's young women and girls. For children living as IDPs, they – as with children living as refugees outside of the Syrian Arab Republic – demonstrate clear signs of trauma. Repeated exposure to violence, loss of family, multiple displacements and instability have had a particular deleterious impact on the lives of Syrian children.

87. Thousands of Syrians place their lives in the hands of smugglers and traffickers, attempting perilous journeys in unseaworthy boats across the Mediterranean. More than 2,000 Syrian refugees have drowned in desperate efforts to reach safety in Europe since 2011.

88. The global failure to protect Syrian refugees is now translating into a crisis in Southern Europe. The responsibility for the protection of the human rights of these refugees is not being adequately shared or shouldered. Genuine international cooperation and burden-sharing is imperative to address the humanitarian crisis.

89. It is essential that countries comply with the principle of non-refoulement and respect their obligations under international customary and conventional law, particularly the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, and other relevant regional human rights instruments.

F. Detainees

90. Men, women and children detained in the Syrian Arab Republic by various actors have been subjected to unlawful killing, severe torture and other forms of ill-treatment.

91. Nowhere are these violations more widespread and systematic than in detention centres of the Government of the Syrian Arab Republic. Over 600 former detainees – held in intelligence agencies and prisons – have been interviewed since August 2011. Almost all have been victims and or witnesses of torture. Many have been present at the death of cellmates.

92. An untold number of people, mainly adult men, have died while detained, as a result of torture or poor living conditions inflicted upon the prison population. Authorities consistently fail to order investigations into credible allegations of torture and custodial deaths. Four years into the Syrian conflict, it is evident that the Government is responsible for the deaths of detainees on a massive scale.

93. Systematic patterns of torture were documented in Military Security branches 215, 227 and 235, Air Force Intelligence in Mezzeh military airport, and other detention facilities run by the Military Intelligence Directorate, the Air Force Intelligence Directorate, the General Intelligence Directorate, the Political Security Directorate and the armed forces. Detainees are held in overcrowded, dirty cells and are not given adequate food or medical care, even for life-threatening conditions.

94. Many detainees reported being subjected to prolonged suspension from their arms, resulting in paralysis of limbs. One prisoner witnessed detainees hung by their wrists from trees in a detention facility controlled by the 4th Division in Damascus. Detainees were frequently subjected to electrocution, including of genitals and other sensitive areas, and prolonged and severe beating with objects. In February, a man held in a State-controlled facility in Qamishli witnessed regular torture of emaciated fellow detainees.

95. Male detainees were frequently subjected to sexual violence, including rape. In 2014, a commander in General Intelligence Directorate's Al-Khatib Branch subjected a male detainee to repeated sexual abuse, including rape. Female detainees were also raped and sexually assaulted while in Government detention.

96. Non-State armed groups established makeshift places of detention where captured suspected collaborators with the Government or members of enemy factions were held, and sometimes ill-treated and executed. Individuals taken hostage, usually for the purpose of prisoner exchange or to extract ransom, have on occasion died or been murdered while in the custody of armed groups.

97. Jabhat Al-Nusra subjected detainees to trials by Sharia courts that did not respect due process, sometimes resulting in summary executions. Civilians abducted from Ishtabraq in late April were detained in Harim prison, run by Jabhat Al-Nusra, in Idlib. Male detainees were reportedly tortured, including being beaten with electric wires. Detainees, including two pregnant women, were given inadequate food and received no medical care. Investigations are continuing with regard to deaths in detention in this facility.

98. ISIS continues to treat its detainees with brutality, subjecting some to torture and other ill-treatment, as well as to summary executions after unfair trials. Captured fighters from Government forces or adversary rebel factions were frequently tortured and executed. Bodies of victims are routinely desecrated and put on public display. Prisoners reported being subjected to lashing and other forms of torture.

G. The besieged

99. Warring parties encircle densely populated areas, preventing civilians from leaving, and blocking humanitarian access. The besieged communities – thousands of men, women and children – are forced to live under shocking and inhuman conditions.

100. Siege warfare is conducted in a ruthlessly coordinated and planned manner, aimed at forcing a population, collectively, to surrender or suffer starvation. Denial of food, water, electricity and medicine has led to malnutrition and deaths amongst vulnerable groups, such as elderly, infants, young children and persons suffering from chronic illnesses. Trapped without basic necessities and under constant fear of deadly snipers or bombardment, severe psychological trauma and desperation characterize the besieged communities.

101. Government forces continue to besiege rebel-controlled districts in eastern and southern Damascus, for the third consecutive year. Civilian residents in these areas have died from starvation, from injuries sustained in aerial bombardments and, as a consequence, from a lack of medical care. A majority of pregnant women in the besieged areas suffer from anaemia, and cases of miscarriage and birth defects have increased noticeably. Sufferers of chronic illnesses, as well as the elderly, have also been particularly affected by the adverse impact of sieges and bombardments on the provision of health care.

102. Interviewees from inside Yarmouk camp describe eating domestic animals and leaves in an attempt to survive. In April, it was estimated that 40 per cent of the children remaining in Yarmouk suffer from malnutrition. Those who were willing to risk passing through Government checkpoints – mainly women and children – have now fled.

103. In places where local truces have been reached between Government and anti-Government armed groups, such as Babila and Moadamiyah (Rif Damascus), civilians continue to suffer from shortages of food and medicine. Two infants died of treatable conditions in Moadamiyah in April and May, after the siege of these areas had ended.

104. Anti-Government armed groups have imposed sieges around the towns of Nubul and Zahra (Aleppo) and, more recently, around Foua'a and Kafria (Idlib). The situation in these Idlib towns is reportedly dire – with shortages of food, water, medicine and electricity. Milk for infants is desperately needed.

105. In January, ISIS besieged Al-Jabal, Al-Joura, Al-Ahrabish and Al-Qousour, all densely populated districts of Dayr Az-Zawr city, which remains under Government control. Hundreds of thousands of civilians have since lived with minimum access to food, medicine, water, electricity and fuel. These besieged communities have survived on bread and water. Access to clean water is limited, and cases of diarrhoea, dehydration and gastrointestinal diseases are increasing.

106. Children, pregnant women and the elderly are particularly vulnerable. Elderly persons with diabetes, anaemia, asthma and other chronic diseases are put at great risk. Their lives are directly endangered by the lack of medicine. In March, a father drowned when attempting to swim across the Euphrates River from the besieged area to find food for his children. Snipers have targeted and killed civilians seeking to escape, including children. In April, a 13-year-old girl died of hunger in Al-Joura. Another teenage girl cried out to her brother in a telephone call, "Our situation is very bad, just pray to God that he will stop the siege or that he will let us die… because we cannot take this anymore."

107. Government officials and soldiers, including their families, have been less affected, receiving basic supplies via Dayr Az-Zayr's military airport.

108. Wherever sieges are employed, a black market economy has been created for goods that are smuggled in or are ushered through checkpoints following payment of bribes. Consequently, sieges are also a business for those enforcing them and for the most well-

connected trapped inside. In most instances, armed actors remain able to function. It is the civilian population who suffers.

H. Religious and ethnic communities

109. All of the Syrian Arab Republic's religious and ethnic communities are suffering as a result of the conflict.

110. Some communities have been specifically targeted, with discriminatory intent, on the grounds of their actual or perceived religious and/or ethnic background, by ISIS and Jabhat Al-Nusra. In some attacks, anti-Government armed groups have acted in concert with Jabhat Al-Nusra.

111. In other instances, the motivations for attacks are more complex, resulting from perpetrators conflating a community's ethnic and/or religious backgrounds and its perceived political loyalties. Where ethnic or religious groups are believed to be supporters of an opposing warring faction, the entire community has been the subject of discrimination and, in some instances, violent attack.

112. The geographic spread of the war – where the war is being most intensely fought – has, inevitably, impacted some communities more than others.

113. ISIS's stated ideology, particularly its posturing as an expansionist caliphate implementing its brand of radical Islam, has motivated its targeting of religious communities it regards as 'infidels. Nowhere has this been more apparent than in the crimes ISIS perpetrated against thousands of Yazidi taken from Sinjar.

114. Hundreds of Yazidi women abducted during the ISIS August 2014 attack on the Sinjar region of northern Iraq were forced over the border into the Syrian Arab Republic. One of the earliest ISIS convoys of women and children crossed on 17 August 2014. The majority were taken to Raqqah governorate, though some were moved into Dayr Az-Zawr and Aleppo governorates. More convoys followed.

115. Yazidi women were specifically targeted because of their community's religious identity, which ISIS believes to be pagan. ISIS has subjected Yazidi women and children to horrific abuse. Women and girls have been sold or gifted (and resold and regifted) to ISIS fighters and tribal leaders in ISIS-controlled Syrian Arab Republic. Others are imprisoned in houses in towns and villages across the Syrian Arab Republic, where they are held in sexual slavery. One young woman described ISIS fighters arriving late at night and surveying the girls as though they were "in a sheep market". Without exception, all interviewees described multiple rapes by several men, including incidents of gang rape.

116. Significant numbers of victims have been girls under 18. For example, the gifting and subsequent rape of a 9-year-old Yazidi girl in Tabqa (Raqqah) was reported. Several Yazidi women and girls have committed suicide during their captivity.

117. Yazidi women and girls have also suffered severe beatings by their ISIS captors. Some were forced to convert to Sunni Islam, though it does not appear that conversion prevented further sexual and physical abuse.

118. The violations committed against Yazidi and other boys in ISIS-controlled Syrian Arab Republic, are detailed in Section D above.

119. In mid-February, ISIS fighters entered Assyrian Christian villages, including Tel Hermes, along the Khabour River in Hasakah. They forced villagers to remove all Christian imagery from their churches, homes and cemeteries. Fighters threatened to impose jiza – a tax imposed on non-Muslims living in an Islamic caliphate – and to kill the local priest if residents did not comply.

120. Following YPG's advice that an attack by ISIS was imminent, most residents moved to YPG-controlled territory in February. A small number of lightly armed Assyrian men remained behind to protect their property. In February, ISIS began its attack on approximately 20 Assyrian villages. While advancing, ISIS indiscriminately shelled the villages and, on entering, shot and killed some members of local defence forces. Others were injured while fleeing.

121. Approximately 12 men were abducted from Tel Hermes, while two men and an elderly woman were taken from Qabr Shamie. ISIS currently holds more than 200 Assyrians hostage, and has requested ransoms, though some hostages were released without payment. Once ISIS captured the villages, its fighters proceeded to destroy churches and to burn and loot houses. The destruction of more than 10 churches has been documented thus far.

122. While the ISIS attack on the Assyrian Christian villages formed part of the group's broader attacks on the YPG throughout the reporting period, the group also targeted villagers on the basis of their religion. This discriminatory intent was demonstrated by the terrorist group's specific attacks on Christian symbols and the destruction of churches once ISIS was in control of the villages. While the YPG regained control of some villages, the Assyrian population remains reticent to return.

123. ISIS has continued to attack Syrian Kurdish communities. The most lethal attack took place between 25 and 27 June 2015 in Kobane. Fewer than 100 ISIS fighters entered Kobane at around 4 a.m. on 25 June. All wore YPG or FSA uniforms, enabling them to infiltrate the town easily and, initially, to move inconspicuously around. Disguised ISIS fighters went house-to-house, summarily executing civilians. Their snipers deployed in buildings, including the Médecins Sans Frontières hospital, shooting and killing civilians who came into the streets. Approximately 250 civilians were killed and hundreds more were wounded. Most died in their homes or in the immediate vicinity of their houses. Scores of civilians – many of them women and children – were captured and held in buildings containing ISIS's sniper positions as human shields. Those taken as human shields either escaped or were rescued by the YPG following clashes.

124. In mid-June, immediately prior to the attack on Kobane, ISIS forced remaining Kurds to leave Raqqah and Tabqa cities (Raqqah), under threat of death.

125. In recent months, ISIS has conducted multiple car and suicide bombings in YPG-controlled areas of Hasakah. In March, during the festival of Nowruz, a car bomb exploded in Hasakah city, killing approximately 50 people and wounding over 150. Other suicide car bombings, in June and July in Hasakah and Qamishli cities, respectively, were directed at military targets, namely YPG checkpoints. As the number of civilian casualties could not be confirmed, it has not been possible to assess the proportionality of these attacks.

126. ISIS's targeting of the Syrian Arab Republic's Kurds appears based on actual or perceived Kurdish civilian support of the YPG, which has recently retaken substantial amounts of ISIS-controlled territory in Al-Hasakah, Raqqah, and Aleppo governorates. During their indoctrination of kidnapped Kurdish schoolboys, held between May and September 2014, ISIS railed against the Kurdish lack of adherence to ISIS' extremist ideology. Despite the YPG's success in pushing them back from the city and region, the recent attack by ISIS in Kobane seems intended to terrorize civilians and to prevent the resumption of normal life in these areas.

127. In ISIS-controlled areas of Dayr Az-Zawr, the group has destroyed Shia Islamic shrines and graves. While the Shia Muslim population fled long before ISIS took control, ISIS has sought to destroy the history of this religious community in this governorate.

128. In March, ISIS attacked Mabouja. The attack was a part of a series of other attacks by ISIS around Hama, aimed at taking control of the key road that connects Homs with Aleppo. While the village has a majority Ismaili population, its residents also include Sunni Muslims. Civilians living near the roads out of Mabouja were the primary victims of the attack, many killed in their homes. Most victims were Ismaili. ISIS also abducted at least 10 people, all Ismailis.

129. In April, Jabhat Al-Nusra and anti-Government armed groups attacked Ishtabraq village. Residents are predominantly Alawite but the village appears to have been targeted because of the Alawite community's perceived support of the Government. Civilians were shot and killed while fleeing. Ansar Al-Din later published videos online showing the detonation of two Alawite shrines in the village.

130. Jabhat Al-Nusra has forced Druze villages in the Syrian Arab Republic to convert to Sunni Islam, on threat of death. In Qalb Lawza, the Druze residents were made to convert once the area came under the control of the terrorist group in January.

131. During the attack on Busra Al-Sham in March by Jabhat Al-Nusra and various anti-Government armed groups, Shia civilians were killed. In the months prior to the attack, the kidnapping and execution of Shia civilians were documented. Once the groups seized control of Busra Al-Sham, mixed Sunni-Shia couples were threatened, with the Shia spouse being told to leave or be killed. Shia women married to Sunni men were threatened with sexual violence.

132. In April, unidentified armed groups detonated explosives inside the Armenian 40 Martyrs church in Aleppo. The explosion destroyed this 15th century church, which contained relics and paintings dating back to the 18th century. The attack followed the April shelling of Armenian neighbourhoods in Aleppo.

133. Following the YPG's retaking of previously ISIS-controlled areas of Tal Abyad in early July and villages in the Tel Tamer region of Al-Hasakah, YPG fighters reportedly looted houses belonging to Arab villagers. Despite some reports alleging forced displacement of Arab communities in these areas, most interviewees stated that they had fled in advance of clashes between ISIS and the YPG, and in fear of coalition airstrikes.

134. In Government-held areas, Sunni men from restive areas are in the greatest danger of being detained at checkpoints or during house searches, as they are perceived as likely sympathizers with or supporters of anti-Government armed groups. This community is particularly at risk of being subjected to enforced disappearance, torture and other detention-related violations.

135. As communities and groups are, or feel, threatened, they have retreated into areas where they believe themselves to be more protected. This has further strengthened the dangerous perception of a link between some ethnicities and/or religions and political allegiances. Consequently, indiscriminate attacks on areas held by an opposing warring party are increasingly likely to affect specific religious or ethnic communities.

136. Government shelling and besieging of areas such as Yarmouk camp and eastern Ghouta impact on the majority Sunni community residents there. As the Government is in control of the skies, the most deadly and often indiscriminate bombardments are of cities, towns and villages inhabited by majority Sunni populations. The presence of opposition fighters among the civilian population in some of these areas does not justify indiscriminate attacks against these locations, nor does it justify the treatment of the area as one target, which often appears to be the case.

137. The shelling of the neighbourhood of Sayda Zeinab (Damascus city) by armed groups in eastern Ghouta (Rif Damascus) has resulted in casualties amongst the Shia Muslim community, since the makeup of the neighbourhood has become increasingly Shia

Muslim as IDPs have fled there, seeking safety. Shelling by armed groups in Bani Zeid, in the Al-Sulimaniyah neighbourhood of Aleppo city, has resulted in casualties among the Christian residents of this neighbourhood. While Government checkpoints and artillery stations exist in these neighbourhoods, there has been no evident attempt to direct attacks towards military objectives on the part of the armed groups.

138. Anti-Government armed groups have besieged Nubul and Zahra (Aleppo) and Foua'a and Kafria (Idlib) partly based on the perception that these predominantly Shia and Alawite villages support the Government. However, the sieges are also a result of the fact that Popular Committees in both areas are shelling nearby armed group-controlled villages.

139. Such situations underline the failure of all parties to take all feasible precautions to protect civilians, and the lack of options available to civilians caught between warring parties.

I. Medical personnel

140. Belligerents have subjected medical personnel to attacks, often as part of broader attacks on health-care facilities and infrastructure.

141. The Government's continued use of indiscriminate aerial bombardment has destroyed and damaged hospitals, field hospitals, clinics, medical equipment, drug warehouses and generators, and caused the temporary or permanent closure of health-care facilities. In March, Government helicopters targeted a field hospital in Hama governorate with a barrel bomb, resulting in the killing of two paramedics.

142. Helicopters also targeted a field hospital in eastern parts of Aleppo city during March and April. Essential medical equipment was destroyed in the attack and led to the eventual closure of one hospital which provided medical services to hundreds of patients monthly. A primary health clinic was damaged by a barrel bomb in March. Medical and forensic personnel were wounded, and a clearly marked ambulance destroyed, in another barrel bomb attack targeting the entrance of a morgue in May.

143. In May, an aerial bomb aimed at an emergency coordination centre in Aleppo destroyed several ambulances. This attack on critical medical infrastructure prevented medical staff from coordinating life-saving services and transporting wounded persons to hospitals.

144. Hospitals and medical personnel in Government-controlled areas have been subjected to targeted attacks by anti-Government armed groups and Jabhat Al-Nusra. In January, a car bomb detonated near a field hospital in Dara'a city, destroying the drug storehouse of the hospital.

145. A suicide bomber from Tajamu Nusrat Al-Mathloum, an armed group active in the Latakia countryside, exploded himself in a public hospital in Latakia governorate in February, killing a nurse and a member of the administrative staff. A private hospital in Damascus city was subject to a mortar attack in February, launched by Jaysh Al-Islam from eastern Damascus.

146. In June during the attack on Kobane, ISIS fighters held civilians inside a Médecins Sans Frontières-supported field hospital, apparently using them as human shields to slow the counter-attack of the YPG and allowing ISIS snipers to continue firing on nearby areas from the roof of the building. The hospital was partly destroyed in subsequent clashes.

147. In regions under ISIS control, medical personnel work under regulations and conditions that substantially obstruct their profession and service. Doctors have been threatened and in some cases forced to stop working in public hospitals or private clinics.

J. Human rights defenders and lawyers

148. Human rights defenders and lawyers continue to be specifically targeted for arbitrary arrest and detention, abductions, enforced disappearances, torture and executions because of their professional activities.

149. Government forces use the sweeping 2012 counter-terrorism legislation and its special court to stifle dissent and silence the advocacy efforts of lawyers and human rights defenders. Human rights and peace activists form the large majority of those detained under article 8 of the anti-terrorism law, which prescribes imprisonment and forced labour for a variety of vaguely defined terrorism-related offenses that include distributing written materials or information.

150. In February 2012, Hussein Ghrer, Hani Al-Zaytani and Mazen Darwish were arrested at their workplace, the Syrian Center for Media and Freedom of Expression, by Syrian Air Force personnel. In March 2014, they were charged with "publicizing terrorist acts" and "promoting terrorist activities" under article 8 of the anti-terrorism law. Amidst growing calls for their release, their trials had been repeatedly adjourned without explanation. The Commission welcomes the release of Hussein Ghrer and Hani Al-Zaytani in mid-July 2015 and of Mazen Darwish on 10 August 2015, but notes that the charges against the three men remain, as does the spectre of further imprisonment.

151. Lawyers who represent clients appearing before the counter-terrorism court are routinely harassed, and in some instances detained. Many have reported being subject to retaliatory actions, including disbarment.

152. Anti-Government armed groups have directed attacks against human rights activists. Among the many abducted, disappeared and killed are four human rights activists: Razan Zeitouneh, Wael Hamada, Samira Khalil and Nazem Hammadi, kidnapped from their office in Douma (Rif Damascus) in December 2013. Their fate and whereabouts are unknown.

153. ISIS attacked activists trying to communicate the daily suffering of those living under its control. The fate of peace activist Father Paolo Dall'Oglio, abducted in Raqqah city in January 2014 by ISIS, is unknown. In July, ISIS published the video of the execution of two Syrians accused of working with the activist Hammoud al-Mousa for the "Raqqa is Being Slaughtered Silently" campaign.

154. By silencing lawyers and human rights defenders for their roles in the dissemination of human rights abuses, all parties to the conflict perpetuate the culture of impunity prevailing in the Syrian Arab Republic.

K. Journalists

155. Syria has become the world's most dangerous country for journalists, with at least 83 killed since late 2011. Violence against journalists continues unabated, forcing scores of Syrian reporters into exile. Media activists still reporting inside the Syrian Arab Republic operate under constant threat and fear for their lives.

156. Journalists continue to be systematically targeted by Government forces for documenting and disseminating information perceived to be supportive of the opposition or disloyal to the Government. Large numbers of journalists are still detained in Government-controlled detention centres, where they are subjected to disappearance and torture. An unknown number have died in detention.

157. In regions controlled by Jabhat Al-Nusra, offices of media activists perceived as being critical of the group have been raided, and journalists routinely intimidated for

"writing against the religion". Harassment of media workers generates a climate of fear such that journalists have become self-censoring.

158. While global media attention focused on harrowing cases of abduction and execution of international journalists by ISIS, Syrian media workers continue to suffer at the hands of the terrorist group. Dozens, both foreign and Syrian, remain in captivity, detained and ill-treated because of their professional activities.

159. A media activist from Palmyra (Homs) explained how he was harassed and intimidated by members of ISIS only days following the capture of the city. Having refused to join ISIS, he was arrested and detained for approximately 15 days. His equipment was seized by the group. While in detention, he repeatedly assured his interrogators that he was reporting only violations committed by Government forces. Upon his release, he decided to leave Palmyra in fear of reprisals against him and his family.

L. Academics

160. Academics in the Syrian Arab Republic have been the subject of threats and intimidation, leading many to flee the country. Respected in their communities as intellectuals, they are targeted on the basis of their actual or perceived allegiance to one or another of the warring parties.

161. In one instance, the 2011 detention of an academic critical of the Government was reported. On release, he fled the country. Investigations continue as to threats by unidentified armed groups to academics working in Government universities. Female academics have faced harassment on the combined basis of their work and their gender.

162. With academics fleeing the country, and universities, particularly in Aleppo and Damascus cities, being subjected to shelling and bombardments, the impact of the war on the Syrian Arab Republic's higher education system, its scholars and its students will be felt for decades.

M. Continuing investigations

163. Investigations continue into the impact of the conduct of the warring parties on other groups and communities, including but not limited to the elderly, persons with disabilities, those suffering from chronic illnesses, migrant workers and sexual minorities.

164. Sexual minorities have been targeted for execution by ISIS and Jabhat Al-Nusra. The Commission continues to investigate reports of ISIS fighters throwing gay men off high buildings, and their being beheaded by Jabhat Al-Nusra.

IV. Conclusions and recommendations

A. Conclusions

165. **The plight of civilians cries out for immediate action to ensure their protection. The livelihood of the Syrian population is subverted daily by the increasingly internationalized nature of this non-international armed conflict, as well as the ferocity of confrontations at the ground level, compounded by the spread of extremism.**

166. **Violations of human rights and international humanitarian law, identified in this report through the pain and suffering of key groups, communities and**

individuals, are living proof of the rampancy of war crimes and crimes against humanity, demanding justice, accountability and peace.

167. The violence is endemic, regrettably proliferating in its scope and extent.

168. Government forces have directed attacks against the civilian population. The attacks have included widespread shelling and bombardment of civilian-inhabited localities and the targeting of civilians for arrest, detention and disappearance on the basis of their association or perceived opposition to the Government. As part of this widespread attack on the civilian population, in accordance with State policy, Government forces have perpetrated crimes against humanity of murder, extermination, torture, rape, enforced disappearance and other inhumane acts.

169. Government forces have committed gross violations of human rights and the war crimes of murder, torture, rape, sexual violence and targeting civilians. Government forces disregarded the special protection accorded to hospitals and medical personnel. Indiscriminate and disproportionate aerial bombardment and shelling by Government forces led to mass civilian casualties and spread terror.

170. Anti-Government armed groups have committed the war crimes of murder, execution without due process, torture, hostage-taking and attacking protected objects.

171. In addition to these war crimes, Jabhat Al-Nusra has recruited and used children in hostilities.

172. ISIS has directed acts of violence and terror against the civilian population under its control in Raqqah, Dayr Az-Zawr, Hasakah, Aleppo, Hama and Homs governorates. ISIS, a structured group, directs and organizes these acts of violence against civilians, evincing an organizational policy. ISIS has committed murder, torture, rape, sexual slavery, sexual violence, forcible displacement and other inhumane acts as part of a widespread attack on the civilian population, amounting to crimes against humanity.

173. ISIS has committed war crimes, including murder, execution without due process, torture, hostage-taking, rape and sexual violence, recruiting and using children in hostilities and attacking protected objects, as well as other serious violations of international humanitarian law.

174. The litany of abuses listed here captures only part of the trauma experienced by Syrian civilians, as the world stands witness.

175. It is thus unconscionable that the global community, as well as regional and local actors, are prevaricating in their response to a conflagration which has been escalating since 2011. This living tragedy demands an expeditious end to the political procrastination and military escalation.

176. There can be no substitute for an all-inclusive peace process which has been too long in coming. Respect for the choice of the Syrian population is paramount.

B. Recommendations

177. The Commission of Inquiry reiterates the recommendations made in previous reports. It further makes the recommendations below.

178. The Commission recommends that all parties:

(a) Ensure the effective protection of civilians comprehensively, bearing in mind the multiple extensive forms of abuse, victimization and re-victimization, and

address the need for accountability, including access to justice at the national and local levels;

(b) Respect civilians' right of access to basic necessities, including shelter, food, water and medical care, and allow unhindered passage of humanitarian aid;

(c) Distinguish military from civilian objectives, refraining from all indiscriminate and disproportionate attacks;

(d) Prohibit and prevent absolutely torture or other cruel, inhuman or degrading treatment, including sexual violence;

(e) Ban effectively the recruitment and use of children in hostilities;

(f) Treat all persons who are deprived of liberty, including detainees, humanely and enable them to access help;

(g) Allow access for an independent humanitarian assessment of besieged areas and communities;

(h) Protect humanitarian workers, including medical personnel, facilitate the rapid and unimpeded passage of relief supplies, and safeguard the sanctity of hospitals and medical transport;

(i) Assist and protect the full range of displaced persons, with due regard to sex and age;

(j) Uphold the mosaic of religious and ethnically diverse communities, and guarantee the space for a variety of human rights defenders, lawyers, journalists, academics and civil society;

(k) Prohibit and prevent the use of illegal weapons, including chemical weapons.

179. The Commission recommends that the Government of the Syrian Arab Republic:

(a) Cease using illegal weaponry, such as incendiary weapons and other weapons such as barrel bombs, employed indiscriminately on civilian-inhabited areas;

(b) Allow the Commission access to the country.

180. The Commission recommends that anti-Government armed groups repudiate extreme elements and apply effective leverage for compliance with international law.

181. The Commission recommends that countries with influence over the warring parties, in particular the permanent members of the Security Council, work in concert to put pressure on the parties to end the violence and to initiate all-inclusive negotiations for a sustainable political transition process in the country.

182. The Commission further recommends that the international community:

(a) Curb the proliferation and supply of weapons, and address the sources thereof;

(b) Sustain and expand funding and other supports for humanitarian operations;

(c) Protect the human rights of all persons, including migrants, internally displaced persons, asylum-seekers and refugees, which are part of customary international law, as well as comply with obligations under international human rights treaties, the 1951 Convention relating to the Status of Refugees and its 1967 Protocol,

and other relevant instruments, including commitments under regional human rights systems;

(d) Ensure the protection space for asylum-seekers and refugees, and abide by the principle of non-refoulement, with effective international solidarity and shared responsibility;

(e) Create more legal avenues to safety for persons needing protection. These include expanded resettlement, humanitarian admission, flexible visa policies, family reunification, or academic and sponsorship schemes.

183. **The Commission recommends that the Human Rights Council support the recommendations made, including by transmitting the present report to the Secretary-General for the attention of the Security Council in order that appropriate action may be taken, and through a formal reporting process to the General Assembly and to the Security Council.**

184. **The Commission recommends that the Security Council:**

(a) Support its recommendations;

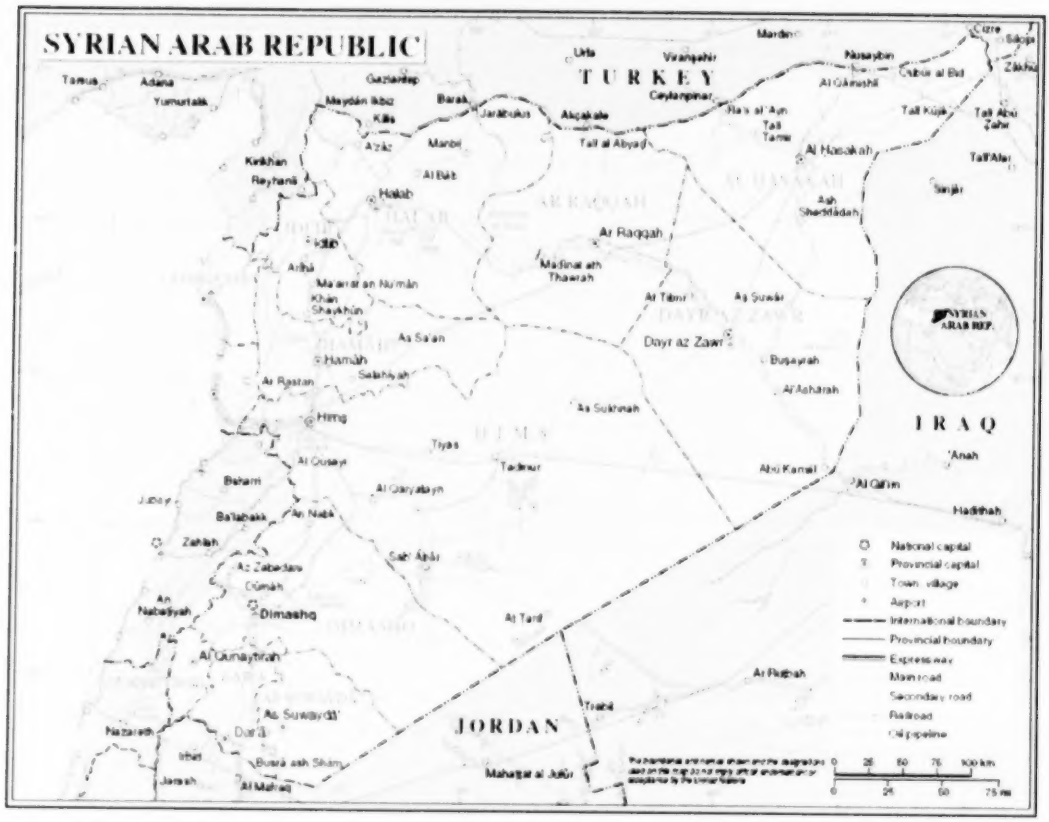
(b) Include regular briefings by the Commission of Inquiry as part of the formal agenda of the Security Council;

(c) Take appropriate action by referring the situation to justice, possibly to the International Criminal Court or an ad hoc tribunal, bearing in mind that, in the context of the Syrian Arab Republic, only the Security Council is competent to refer the situation;

(d) Ensure immediate commitment by the relevant actors and stakeholders to a comprehensive peace process that responds sustainably to the aspirations of the Syrian population.

Annex

Map of the Syrian Arab Republic



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Corrigendum

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I. Introduction

1. In August 2012, the Human Rights Council Advisory Committee submitted a research proposal on local government and human rights (A/HRC/AC/9/6) to the Council for its consideration and approval.

2. On 26 September 2013, the Council adopted resolution 24/2, in which it took note of the above-mentioned research proposal and requested the Advisory Committee to prepare a research-based report on the role of local government in the promotion and protection of human rights, including human rights mainstreaming in local administration and public services, with a view to compiling best practices and main challenges, and to present a progress report thereon to the Council at its twenty-seventh session.

3. The Advisory Committee was also requested to seek the views and inputs of Member States, relevant international and regional organizations, the Office of the United Nations High Commissioner for Human Rights (OHCHR) and relevant special procedures, as well as national human rights institutions and non-governmental organizations (NGOs), in order to prepare the above-mentioned report.

4. At its twelfth session, in February 2014, the Advisory Committee established a drafting group tasked with the preparation of the said report and designated the following members of the Committee as members of the drafting group: Mario Luis Coriolano, Hoda Elsadda, Latif Hüseynov (Rapporteur), Anantonia Reyes Prado, Dheerujlall Seetulsingh (Chair), and Imeru Tamrat Yigezu. Subsequently, Katharina Pabel joined the drafting group and replaced Mr. Seetulsingh as Chair, while Ms. Elsadda replaced Mr. Hüseynov as Rapporteur. Changrok Soh and Laura-Maria Crăciunean also subsequently joined the drafting group.

5. The drafting group elaborated a questionnaire, in accordance with Council resolution 24/2, which was disseminated to different stakeholders. To date, a total of 67 responses have been received: 22 from States, 20 from national human rights institutions, 10 from NGOs, 12 from local authorities and 3 from international or regional organizations.

6. In line with Human Rights Council resolution 24/2, a progress report was submitted to the twenty-seventh session of the Council with the recommendation that the Council request the Advisory Committee to submit a final report at its thirtieth session. At its twenty-seventh session, the Council adopted resolution 27/4, which took note with appreciation of the Advisory Committee's progress report, and requested the Committee to continue its research and to submit a final report on the role of local government in the promotion and protection of human rights to the Human Rights Council at its thirtieth session.

7. The Council also requested the Committee, when elaborating the final report, to include therein the main challenges faced by local governments in the promotion and protection of human rights, and to make recommendations on tackling those challenges based on best practices in human rights mainstreaming in local administration and public services.

II. Definition of local government

8. Local government is commonly defined as the lowest tier of public administration within a given State. In unitary States, local government usually comprises the second or third tier of government, whereas in federal States, it is constituted as the third or sometimes fourth tier of government. Local government aims at bringing government to the

grass roots and enabling citizens to participate effectively in the making of decisions affecting their daily lives. As the level closest to the citizens, local government is, in principle, in a much better position than central government to deal with matters that require local knowledge and regulation on the basis of local needs and priorities.

9. The organization and functioning of local government vary considerably between countries. Different names are used for local government entities in different countries (county, prefecture, district, city, town, borough, parish, municipality, village, etc.). Local governments exist geographically both in urban and rural settings.

10. Local governments possess certain powers conferred upon them by legislation or directives of the higher levels of government.[1] These powers consist, in substance, in regulating and managing certain public affairs related to the local surroundings and delivering certain public services. The extent of powers of local government should always be analysed in the context of relations between local authorities and central government or regional authorities. In general, in unitary States, central governments tend to shoulder the responsibility for the planning, programming, regulating and funding of houses, and local governments manage implementation with varying degrees of autonomy. In federal systems, on the other hand, local governments tend to have more autonomy regarding programmes, policies and implementation of housing (Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Leilani Farha (A/HRC/28/62)). One of the important features of local government is that it has a specific, subordinate regulatory power for the exercise of its function which is, however, subject to compliance with the law.

11. Although in some countries "local government" and "local self-government" are used interchangeably, given the fact that local government has different forms in different countries, these two concepts should be differentiated. Local public administration can be exercised not only by local self-government entities (e.g. municipalities), but also by local units of State administration: the former are directly elected by the local population and enjoy wide-ranging autonomy, whereas the latter act as agents of the higher authorities and their officials are appointed by and accountable to those authorities. Local self-government is thus based on the principle of decentralization, and local State administration is based on the principle of deconcentration.

12. The degree of self-government enjoyed by local authorities can be regarded as a key element of genuine democracy. In this regard, political, fiscal and administrative decentralization is essential for localizing democracy and human rights. It should be borne in mind that democracy is not possible without respect for human rights and no human right can be achieved without democracy. Nevertheless, local self-government does not automatically lead to participatory democracy. While decentralization in general works towards the empowerment of citizens in decision-making and control over policies, certain measures and procedures must be securely in place to create the necessary environment to make democratic participation possible and effective.

13. The role of local authorities should not be limited to mere executors of decisions taken and policies developed without them. On the other hand, local independence should have certain limits clearly prescribed by law, and mechanisms should be available for supervising the legality of local authorities' activities. Democratic checks and balances mechanisms are essential for augmenting the capability of local government in

[1] In Brazil, municipalities are part of the Federation and not just dependent divisions of the State, in accordance with the Constitution.

implementing human rights. Government officials who are accountable to voters are more likely to respond to citizens' demands than those who are not.[2]

14. To ensure effective local governance and adequate implementation of human rights at the local level, it is important to have a proper legal framework for local government. The organization, powers and functions should be clearly prescribed by law. Further, national legislation should delineate clearly the responsibilities and powers of central and local government authorities in relation to one another.

15. Local government should preferably be recognized in the national constitution; indeed, in a number of countries, the constitutions specifically protect local government autonomy. It should be underlined that constitutional protection provides the greatest guarantee of stability. A specific law on local government passed by a national parliament is the next best solution in this regard. In a few countries, legal safeguards are in place to maintain the stability of laws governing local government. In Hungary, for example, the Law on Local Authorities can be adopted or amended only by a two-thirds majority of the parliamentarians present. The same applies to any legislation restricting the rights associated with local self-government.

16. It is noteworthy that the principles of subsidiarity, decentralization and accountability are explicitly envisaged in a number of countries as main principles of local government. Furthermore, the respective laws provide for the right of local authorities to have recourse to a judicial remedy in order to ensure respect for such principles.

III. States and local governments: Shared and complementary duties to respect, protect and fulfil human rights

17. As a matter of international law, the State is one single entity, regardless of its unitary or federal nature and internal administrative division. In this regard, only the State as a whole is bound by obligations stemming from international treaties to which it is a party. Thus, by becoming a party to an international human rights treaty, a State assumes obligations to respect, protect and fulfil human rights. More specifically, only States are obliged to submit reports as required by the respective universal and regional human rights treaties, and only States can be the subject of individual or inter-State complaints under such treaties. Furthermore, a State appearing before an international human rights complaints mechanism cannot defend itself by claiming that the alleged violation was committed by a local authority.

18. It should also be emphasized that under general international law a State, as represented by the central government, is responsible for all acts of all its organs and agents.[3] In addition, when it comes to State responsibility, despite its internal organization, in accordance with customary international law, there are several principles that apply. Firstly, the structure of the State, the functions of State organs and even the mere definition of what constitutes a State organ are not, in general, governed by international law. It is within State sovereign competence to decide how its own administration is to be structured

[2] International Institute for Democracy and Electoral Assistance, "Democratic Accountability and Service Delivery: A Desk Review", January 2013, available from http://www.idea.int/resources/analysis/democratic-accountability-and-service-delivery-a-desk-review.cfm

[3] In this respect, a reference could be made, *mutatis mutandis*, to art. 50 of the International Covenant on Civil and Political Parties, according to which the provisions of the Covenant "shall extend to all parts of federal States without any limitations or exceptions".

and which functions are to be ascribed to its central and/or local government. But, while the State remains free to determine its internal structure and functions through its own law and practice,[4] for the purposes of international responsibility the conduct of its institutions, administrative divisions performing public functions and exercising public powers is attributable to the State, even if those institutions are regarded, in domestic law, as autonomous and/or independent of the central executive government.

19. According to customary international law, it is recognized that "the conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central government or of a territorial unit of the State".[5] In its General Comment No. 16, the Committee on Economic, Social and Cultural Rights emphasized, "Violations of the rights contained in the Covenant can occur through the direct action of, failure to act or omission by States parties, or through their institutions or agencies at the national and local levels".[6] It should be noted that the conduct of certain institutions exercising public powers is attributed to the State even if those institutions are regarded in internal law as autonomous and independent of the executive Government.[7]

20. Illegal acts of any public authority, including local government, are attributable to the State even if they are *ultra vires* or contravene domestic laws and instructions. This flows directly from the principle contained in article 27 of the Vienna Convention on the Law of Treaties, according to which a State Party "may not invoke the provisions of its internal law as justification for its failure to perform a treaty".

21. It is the central government which has the primary responsibility for the promotion and protection of human rights, while local government has a complementary role to play. Upon ratifying an international human rights treaty, a State may delegate implementation thereof to lower tiers of government, including local authorities. In this respect, the central government might need to take necessary measures at the local level, in particular, to establish procedures and controls in order to ensure that the State's human rights obligations are implemented. Local authorities are obliged to comply, within their local competences, with their duties stemming from the international human rights obligations of the State. Local authorities are actually those who are to translate national human rights strategies and policies into practical application. Representatives of local authorities should therefore be involved in the drafting of such policies. In decentralized States, local government can play a more proactive and autonomous role as regards the protection and promotion of human rights. Institutionalized cooperation on human rights between the central and local governments can have a positive impact on the level of implementation of the international human rights obligations of the State.

22. To comply with their human rights responsibilities, local authorities should have necessary powers and financial resources. Adequate implementation of human rights, particularly economic, social and cultural rights, by local authorities require financial

[4] Draft articles on Responsibility of States for internationally wrongful acts, adopted by the International Law Commission at its fifty-third session (2001), *Official Records of the General Assembly, Fifty-sixth session, Supplement No. 10* (A/56/10), art. 4, para. 2.

[5] Ibid., sect. IV.E.1.

[6] General Comment No. 16 (2005), the equal right of men and women to the enjoyment of all economic, social and cultural rights (art. 3 of the International Covenant on Economic, Social and Cultural Rights), para. 42, available from http://www.refworld.org/docid/43f3067ac.html

[7] Commentaries to the draft articles on Responsibility of States for internationally wrongful acts (see footnote 4 above, sect. IV.E.2), p. 82, available from http://www.eydner.org/dokumente/darsiwa_comm_e.pdf.

resources, which are not available everywhere; this should be taken into consideration both at the national and international level. It should be particularly emphasized that, whatever powers that are conferred upon local authorities, they would not be effective if no financial resources were available to carry them out.

23. The principle of shared responsibility of different tiers of government for the protection and promotion of human rights has been on several occasions underlined by the United Nations human rights treaty bodies. Thus, in its General Comment No. 4 (the right to adequate housing), the Committee on Economic, Social and Cultural Rights noted that States parties to the International Covenant on Economic, Social and Cultural Rights should take steps "to ensure coordination between ministries and regional and local authorities in order to reconcile related policies (economics, agriculture, environment, energy, etc.) with the obligations under article 11 of the Covenant".[5]

IV. Role of local government in the protection and promotion of human rights

24. The legislation of a number of States – in some cases, at the constitutional level – explicitly requires local government to respect human rights (e.g. Australia, Côte d'Ivoire, Morocco and Slovenia). In some other States, the respective constitutional requirement applies to all public powers (e.g. Austria, Azerbaijan, Bosnia and Herzegovina, Germany, Kenya, Lithuania, Malaysia, South Sudan, Spain and Togo). In Luxembourg, the powers of the communes must be exercised in accordance with the law, which means that they are obliged to observe human rights guaranteed by the law. In some countries, the duty of local government to observe human rights is limited in the law to specific rights or principles. For instance, the Local Self-Government Act of Serbia stipulates that municipalities must ensure promotion and protection of the rights of national minorities and ethnic groups. In Slovenia, municipal administrations are required by law to take care of gender mainstreaming. In Ireland, the local government legislation does not specifically provide for the promotion and protection of human rights, but in discharging their functions local authorities are required to have regard for the need to promote social inclusion. Similarly, the legislation on local governments in India does not specifically mention protection of human rights among their responsibilities; however, the constitutionally mandated municipal functions directly relate to core human rights, such as implementation of initiatives for democratic inclusion, welfare measures and the local justice system.

25. Having an explicit legal provision which obliges local government to promote and protect human rights appears to be a more preferable approach. Local authorities are thus made aware of their human rights responsibilities, understanding that any failure to comply with these responsibilities will entail their liability under national law as well as international responsibility of the State as a whole. Further, such a provision imposes a clear obligation on local authorities to apply a human rights-based approach to delivering public services within their defined competences. Consequently, it may well encourage rights holders to claim their rights vis-à-vis local authorities.

26. Local authorities are close to citizens' everyday needs and they deal with human right issues on an everyday basis. Therefore, there exists a clear and strong connection between human rights and local government. When performing their functions, local

[5] Committee on Economic, Social and Cultural Rights General Comment No. 4, the right to adequate housing (art. 11 (1) of the Covenant), para. 12, adopted at the Sixth Session of the Committee on Economic, Social and Cultural Rights, on 13 December 1991, available from http://www.refworld.org/docid/47a7079a1.html.

authorities take decisions relating in particular to education, housing, health, the environment, and law and order, which are directly connected with the implementation of human rights and which may enforce or weaken the possibilities of its inhabitants to enjoy their human rights. Furthermore, local government is always facing the risk of discriminatory practices against perceived outsiders, such as immigrants or ethnic minorities, to the local community. In the area of housing, for example, "scapegoating, stigmatization and discrimination against homeless people" are often more pronounced at the local level. Integrating a human rights dimension in all local government initiatives is vital for addressing these violations. Actually, it is difficult to imagine a situation of human rights being realized where there are no local authorities to provide the necessary services. Local officials are thus responsible for a wide range of human rights issues in their day-to-day work. However, this work is rarely perceived as human rights implementation, neither by the authorities, nor by the public. Consequently, human rights remain distant as a frame of reference or analysis in most policies and practices at the local level, while they may actually be human rights in practice." In this regard, it should be borne in mind that the real effect of human rights is experienced locally.

27. Human rights duties of local government follow the classical tripartite typology of States' human rights obligations, namely, the duty to respect, the duty to protect and the duty to fulfil. The duty to respect means that local officials must not violate human rights through their own actions. It requires local government to refrain from interfering with the enjoyment of the rights and freedoms of all persons within its jurisdiction. For example, in relation to the freedom of religion, local government may not prohibit religious communities, beyond the permissible limitations, from using public squares or municipal buildings for religious celebrations. Regarding the right to health, local government may not deprive certain communities or groups of access to health care facilities. The duty to protect requires measures to ensure that third parties do not violate the rights and freedoms of the individual. For example, local authorities are required to take action to ensure that children are not prevented by others from attending school. The duty to protect can necessitate creating safer urban environments that reduce the risk of violence, for example against women. The duty to fulfil means that local government must take positive action to facilitate the enjoyment of the rights and freedoms. For example, local authorities are obliged to fulfil the right to education by sustaining a good educational system. To comply with the duty to fulfil the right of individuals not to be discriminated against, local human rights mechanisms such as ombudspersons or specialized anti-discrimination agencies can be established.

28. Further, local authorities should promote the understanding of and respect for human rights of all individuals within their jurisdiction through education and training. In particular, local authorities should organize, on a systematic basis, human rights training for their elected representatives and administrative staff, and the dissemination of relevant information among citizens about their rights. By promoting human rights, local authorities can help build a culture of human rights in the community.

29. Local authorities should pay particular attention to the promotion and protection of rights of vulnerable and disadvantaged groups such as persons with disabilities, ethnic minorities, indigenous communities, victims of sexual discrimination, children and elderly

" Congress of Local and Regional Authorities (Council of Europe), Strasbourg, 25–27 March 2014, 26th session, CG(26)5FINAL, "Best practices of implementation of human rights at local and regional level in member states of the Council of Europe and other countries" (Rapporteur: O. Molin), Resolution 365 (2014), Explanatory Memorandum, paras. 8, 14, available from http://www.coe.int/t/congress/texts/RESOLUTIONS_en.asp?mytabsmenu=6.

people. In this respect, the quality of the services that local governments provide to such groups "tests" the degree to which local governments in practice respect human rights.[10]

30. In a number of countries, efforts are made to mainstream human rights into local authorities' activities. Thus, measures are taken to foster participatory governance, to conduct human rights-based audits and impact assessments, to reframe local concerns as human rights issues, to establish procedures for verifying the compatibility of local policies and regulations with human rights, to report on local compliance with human rights treaties, to provide systematic human rights training to local civil servants, to raise public awareness of human rights, etc. Drafting a local human rights charter (or human rights ordinance)[11] setting out specific human rights responsibilities that fall upon the local government can be regarded as another important step towards localizing human rights. In this context, it is highly desirable that local authorities have human rights offices with sufficient human and financial resources that could fully take charge of human rights issues within the respective local competences.

V. Main challenges faced by local governments in the protection and promotion of human rights

31. The main challenges faced by local governments in the protection and promotion of human rights are political, economic and administrative. The biggest challenge facing local governments is lack of political will, particularly in countries with non-democratic systems or with incipient democracies. This is exacerbated by political conflicts and tensions in the country. Local governments in such States suffer from a lack of autonomy and the absence of long-term vision/planning and/or commitment. In some cases, tensions and power struggles may exist between central and local governments, especially in situations of instability or conflict. Furthermore, in States with a highly centralistic structure it may also be difficult to develop a strong political effort for human rights at the local level. The lack of autonomy and self-government inhibits the accountability and the sense of responsibility for the implementation of human rights. Centralized policies and structural adjustment measures may often impede the observance of human rights in local governments.

32. A second challenge to local governments that obstructs their implementation and promotion of human rights is shortage in institutional capacity and/or resources, due either to the lack of political will to enable local governments, or to the difficult economic situation in the country. The report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Leilani Farha, on the roles of local and other subnational levels of government, highlights the conclusion that "decentralization is not always favourable to the implementation of the right of adequate housing" (A/HRC/28/62, para. 71). For even though decentralization is potentially conducive to participatory democracy, citizen engagement, transparency and accountability, these positive features remain contingent on the existence of mechanisms and political will to implement democratic governance. Lack of the necessary resources and budgets to finance the implementation of projects and services at the local level undermines the ability of local governments and detracts from their legitimacy in local communities.

[10] Ibid.

[11] Human rights ordinances adopted in several cities in the United States of America, beginning with the San Francisco Committee on the Elimination of Discrimination against Women ordinance, could be specifically mentioned, as they represent a good example of incorporation of human rights into local policies and measures.

33. A third challenge is the lack of adequate coordination between central and local governments. A problem also arises where laws regarding the competence sharing between central government and local government are not simple, accessible and clear. A clear-cut division of powers between the different tiers of government is the precondition for the establishment of accountability, and hence the precondition for the implementation of human rights. It must become self-understood that every authority provided with public powers has to respect, protect and fulfil human rights. The linkage between the exercise of public powers and the observance of human rights is often/sometimes neglected at the local level.

34. A further challenge is the lack of information about the requirements resulting from human rights at the local level. Every person in charge of the local government must be aware of the obligations imposed by human rights. Often this awareness lacks a well-founded knowledge about the content and the scope of human rights. As a result, many local governments fail to understand and incorporate human rights into local policy and practice. Efforts to increase human rights coordination are marred by a lack of transparency.[12]

35. The fifth challenge to local governments is the non-recognition of the role and contributions from civil society. This is usually coupled with a lack of understanding of human rights at the local government level. Failure to recognize and work with civil society curtails efforts by local governments to reach marginalized communities.

36. Another challenge to local government is the absence of human rights obligations in the priorities of donor and international development agencies in the context of decentralization. For example, in Indonesia, the International Monetary Fund, the World Bank, the Asian Development Bank, the United Nations Development Programme and other donor agencies promoted decentralization while disregarding human rights.[13]

VI. Human rights mechanisms at the local level

37. The protection of human rights requires independent human rights mechanisms. Such mechanisms may take different forms in different communities, and there are several examples that could serve as a model for the implementation of human rights at the local level – local ombudspersons, consumer complaints boards, patient injury boards, anti-discrimination agencies, etc. The competences and structures of these mechanisms can be very diverse, but they must be seen as important means of safeguarding human rights and handling citizens' complaints at first instance. Importantly, the establishment of a local human rights mechanism gives visibility to the role of local authorities in human rights protection. In order for them to effectively discharge their functions, these should be provided with sufficient human and financial resources and be accessible to everyone within the respective locality.

38. The European Charter for the Safeguarding of Human Rights in the City, adopted in Saint-Denis in 2000,[14] provides for the creation of ombudspersons as a prevention

[12] Human Rights Institute, Columbia Law School.

[13] Christopher Silver, "Do the donors have it right? Decentralization and changing local governance in Indonesia", in *Globalization and Urban Development*, Harry W. Richardson and Chang-Hee Christine Bae, eds. (Berlin, Springer, 2005). Quoted in Report of the Special Rapporteur on Adequate Housing, para. 25.

[14] This important document is the result of the preparatory work initiated in Barcelona in 1998 in the framework of the Conference "Cities for Human Rights", which was organized to commemorate the 50th anniversary of the Universal Declaration of Human Rights. Hundreds of mayors and political

mechanism and also as a means of upholding human rights at the local level. Ombudspersons monitor local administrations to ensure they do not violate the rights and principles set down in the Charter.

39. Only a few States have human rights protection mechanisms at the local level. For instance, in Switzerland, several cities have established ombudsperson offices. These offices are independent organs that mediate in case of conflicts between private individuals and the authorities. Even though they are not authorized to make binding decisions, only recommendations, they have proven to be a successful means to resolve disputes. In the Republic of Korea, several local governments have established human rights commissions. In the Netherlands, complaints regarding human rights violations can be filed with the national ombudsperson or with the complaint mechanism of a municipality. In Denmark, the Copenhagen Citizens' Counsellor was the country's first citizen counselling institution established by the Municipal Council to create an independent ombudsperson function in Copenhagen. Today, 21 municipalities have citizen counselling institutions. In Norway, municipalities have ombudspersons for certain administrative areas. In Bosnia and Herzegovina, a number of local governments have established human rights commissions, which acts as advisory bodies to municipal councils, although they are not a mechanism for the protection of human rights per se. In Australia, the Victorian Equal Opportunity and Human Rights Commission facilitate local government forums. It developed a toolkit for local government, which reviews local government programmes and practices upon request to ensure that they are compatible with the Victorian Charter of Human Rights and Responsibilities, and provides training to local councils. In Azerbaijan, the Council of Independent Experts at the Ombudsman Institute was established in April 2003, in which members of influential NGOs and civil society dealing with protection of human rights are represented. The Commissioner conducts conferences, trainings, round-table discussions and other activities in association with NGOs.[15]

40. In a number of countries (e.g. Azerbaijan, Ireland and Slovenia), the national ombudsperson office is empowered to investigate complaints not only against State agencies, but also local government authorities.

41. The Municipal Code of Guatemala establishes the obligation of local government to convene different social sectors of the municipality to participate in the development and institutionalization of municipal public policies and plans for urban and rural development. It also stipulates the preservation and promotion of rights of communities to their cultural identification according to their values, languages, traditions and customs. The Code also authorizes the establishment of commissions for compliance.

VII. Human rights city: Conceptual framework and guiding principles

42. The idea of a "human rights city" is one of the globally developed initiatives aimed at localizing human rights. It is based on the recognition of cities as key players in the promotion and protection of human rights, and refers in general to a city whose local government and local population are morally and legally governed by human rights principles. The concept was launched in 1997 by the People's Movement for Human Rights

representatives participated in the event and united their voices to call for a stronger political acknowledgement as key actors in safeguarding human rights in a highly urbanized world. Available from http://www.uclg-cisdp.org/en/right-to-the-city/european-charter#sthash.E5JeKdIt.dpuf.

[15] Azerbaijan, Institute of the Commissioner for Human Rights.

Education (PDHRE), a non-profit international service organization.[16] It was further developed, particularly as a normative concept, by the World Human Rights Cities Forum, which takes place annually in the city of Gwangju, Republic of Korea.

43. The Gwangju Declaration on Human Rights City, adopted at the 2011 World Human Rights Cities Forum on 17 May 2011, defines a human rights city as "both a local community and socio-political process in a local context where human rights play a key role as the fundamental values and guiding principles". A human rights city requires a shared human rights governance in the local context where local government, local parliament (council), civil society, the private sector and other stakeholders cooperate to improve the quality of life for all people in the spirit of partnership based on human rights standards and norms. A human rights-based approach to local governance includes the principle of democracy, participation, responsible leadership, transparency, accountability, non-discrimination, empowerment and rule of law. The concept of a human rights city also emphasizes the importance of securing the broad participation of all actors and stakeholders, in particular marginalized and vulnerable groups, and the importance of effective and independent human rights protection and monitoring mechanisms to which all people have recourse. It recognizes the importance of inter-local and international cooperation and solidarity among cities engaged in the promotion and protection of human rights.[17]

44. *The* Gwangju Guiding Principles for a Human Rights City, adopted at the 2014 World Human Rights Cities Forum on 17 May 2014, contains the following principles for a human rights city: the right to the city; non-discrimination and affirmative action; social inclusion and cultural diversity; participatory democracy and accountable governance; social justice, solidarity and sustainability; political leadership and institutionalization; human rights mainstreaming; effective institutions and policy coordination; human rights education and training; and right to remedy.

45. A number of cities throughout the world have officially declared themselves "human rights cities",[18] and several international networks of cities have developed.

46. Other concepts have been developed, both in doctrine and in practice, which essentially pursue the same objective. One of them is "the right to the city" first articulated by the French philosopher Henri Lefebvre;[19] it refers mainly to the right of the inhabitants and "users" of the city to participate in local public affairs and define the space of the city.[20] So far the concept of "the right to the city" has been institutionalized in a limited manner, examples being the City Statute of Brazil (2001), the Montreal Charter of Rights and Responsibilities (2006) and the Mexico City Charter for the Right to the City (2010).

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[16] The Human Rights Cities Program run by PDHRE includes the development of 30 human rights cities and the training of 500 young community leaders at four Regional Learning Institutions for Human Rights Education.

[17] Gwangju Declaration on Human Rights City, full text available from http://www.uclg-cisdp.org/sites/default/files/Gwangju_Declaration_on_HR_City_final_edited_version_110524.pdf.

[18] Among them: Rosario (Argentina), which was the first human rights city, initiated in 1997; Bandung (Indonesia); Barcelona (Spain); Bihac (Bosnia and Herzegovina); Bogota (Colombia); Bongo (Ghana); Copenhagen (Denmark); Graz (Austria); Gwangju (Republic of Korea); Kaohsiung (Taiwan Province of China); Kati (Mali); Kotogocho (Kenya); Mexico City (Mexico); Mogale (South Africa); Montreal (Canada); Nagpur (India); Porto Alegre (Brazil); Prince George's County, Maryland (United States); Saint-Denis (France); Sakai (Japan); Thies (Senegal); Utrecht (the Netherlands); Victoria (Australia).

[19] Henri Lefebvre, *Le Droit à la Ville* (Paris, Ed. du Seuil, 1968).

[20] The Habitat International Coalition and its Housing and Land Rights Network have worked over the past decade to promote and develop the definition of "the right to the city."

47. The right to the city was specifically laid down in the World Charter for the Right to the City (2005);[21] a wide range of organizations and networks, including UNESCO and UN-HABITAT, participated in the preparation of this important document. The charter defines the right to the city as the equitable use of cities according to principles of sustainability, democracy, equity and social justice. It is a collective right of urban inhabitants that confers upon them the legitimate right to action and organization, based on respect of their differences, cultural expressions and practices, with the objective of exercising their right to self-determination and attaining an adequate standard of living. The right to the city is interdependent with other internationally recognized human rights, including civil, political, economic, social, cultural and environmental rights, as defined in international human rights treaties.

48. The concept of "the rights of the city" has emerged during the past decades as an alternative to the withdrawal of central and state governments' responsibilities and resources in the globalized market. Many cities are increasingly subordinated to central decision-making institutions, public budgets and investment, whereas municipalities have to fend for themselves and/or compete over resources for development and services, often without the authority to levy revenues or participate effectively in decisions affecting allocations. In such cases, local authorities face the prospect of resorting to the privatization of public goods and services – with their typically harmful economic consequences for the poor – and/or to seek fiscal support from the private financial market. The concept may refer to the administrative, political and economic rights of the local governments in relation to national/federal authorities, and to the presence and role of local authorities vis-à-vis the international and multilateral institutions (United Nations, World Bank, International Monetary Fund, etc.).

49. The concept of "human rights in the city", developed mainly in the European Charter for the Safeguarding of Human Rights in the City and Global Charter-Agenda for Human Rights in the City,[22] implies the commitment to: respect, protect and fulfil all internationally recognized human rights at the local level; give priority attention to marginalized groups and populations living under vulnerable conditions; and mainstream a human rights approach to local policies (not just the implementation of human rights programmes).

50. Meanwhile, best practices include policy initiatives that also recognize the validity of the approach to establish a "human rights habitat", with its more-embracing concept of the rural-urban continuum, and the conscious recognition that the same rights of city dwellers apply equally to other inhabitants of the periphery of urban centers, as well as those in more distant regions. One example of this appellation is the First Civic Forum of Nairobi declaring its city a "human rights habitat" (2002). This initiative emerged with the support of the local Mazingira Institute, with its environmental programme and scope. Also, the Habitat International Coalition and its Housing and Land Rights Network have worked over the past decade to promote and develop the definition of "the right to the city".

[21] Full text available from http://portal.unesco.org, http://www.urbanreinventors.net/3/wsf.pdf and www.hic-net.org.

[22] The charter was drafted by the United Cities and Local Governments (UCLG) Committee on Social Inclusion, Participatory Democracy and Human Rights. It was discussed and approved by elected representatives, experts and representatives of civil society from all over the world in 2011.

VIII. Role of civil society in the planning and implementation of activities for the promotion and protection of human rights at the local level

51. Most States responding to the questionnaire did not answer the question on the role of civil society in the planning and development of activities for the protection and promotion of human rights at the local level, or gave nonspecific answers. However, examples of replies note the participation of civil society organizations in trainings (Burundi). Other States reported NGOs as active, but not necessarily cooperating with the Government (Georgia, Hungary, Lebanon, Slovenia and Switzerland).

52. Civil society continues to be in the background of decision-making, rather than as a partner. The working conditions for NGOs in some countries are reportedly under government restrictions and they are prevented from receiving funds, and respondents claim that numerous violations of the human rights to freedom of expression and association for NGOs take place.

53. The majority of respondents clarified that the motives for promoting human rights are primarily based on struggles to counter human rights violations and human suffering that they have witnessed and/or endured. The Human Rights City model of Gwangju, Republic of Korea has spread to other cities in the spirit of the 18 May Gwangju Democratization Movement. The response from Prince George's County, Maryland (United States of America) made reference to roots in the local experience of a former slave-holding county.[2] Many respondents characterized violations as ongoing, including those arising from: economic insecurity and the financial crisis; corruption and armed conflict; authoritarian regimes; and discrimination based on gender, race and colour.

54. Following the Gezi Park Protests in Turkey, civil society has played an increasingly important role in organizing meetings and preparing reports on specific groups' expectations from local government authorities. Positive examples are initiatives undertaken by SPoD (a national lesbian, gay, bisexual, transgender and intersex NGO); two Internet-based social movements, the Association for the Support and Training of Women Candidates (KADER), Urbanism Movement of People, IULA-EMME (International Union of Local Authorities, Section for the Eastern Mediterranean and Middle East Region (currently UCLG-MEWA).[3]

IX. Best practices

55. Analysts of the responses received to the questionnaire shows that civil society plays an important role in boosting local action in the field of human rights in the respective countries. In Hungary, for example, NGOs can participate in the planning and in the implementation phase of regulations and programmes of the municipalities in accordance with the law. In Burundi, civil society participates actively in the training activities on human rights for the creation of programmes of information and awareness-raising. In India, civil society representatives have been contributing to strengthening the roles of local governments in effectively addressing rights of marginalized citizens at the local level. In Switzerland, NGOs are free to bring forth different projects, for example, against racism. In Luxembourg, the National Council for Foreigners is an example of the participation of civil society in the promotion and protection of human rights. The Council is composed of civil

[2] Prince George's County Human Relations Commission.

[3] Turkey, Human Rights Law Research Center, Istanbul Bilgi University.

society representatives and is a consultative body that studies the situations of foreigners and their integration. It gives recommendations on government projects and recommends policies. That said, it should also be noted that in some countries civil society does not have any role in protecting human rights at the local level.

56. Some initiatives are building local governments' and authorities' capacity on human rights: Burundi has targeted police for human rights training; Mexico conducts sessions for civil servants on the new constitutional principles, including human rights; Georgia focuses this capacity-building on citizens directly, rather than on local governments; the Australian Local Government Association and the National Human Rights Commission in Australia work in cooperation to operationalize human rights locally.

57. In Hungary, local governments are required to analyse the conditions of disadvantaged groups in their area and promote equal opportunities for them. Luxembourg mandates Consultative Commissions for social integration – these commissions make recommendations to the local governments. Burundi states as a best practice the cooperation between local government and the United Nations system. Luxembourg is promoting multilingualism and multiculturalism in public services, such as for integrating migrants.

58. In Australia, the Victorian Equal Opportunity and Human Rights Commission facilitate local government forums, and has developed a toolkit for local government. The Commission will review local government programmes and practices on request to ensure they are compatible with the Victorian Charter of Human Rights and Responsibilities, and will provide training to local councils.[25]

59. In 1980, the Sakai, Japan, City Government recognized the sanctity of human rights, and affirmed that it would enlist the efforts towards the realization of a "Human Rights Protection City". Sakai City subsequently advanced policy based on the human rights principles and later joined other local governments in formulating its own education and enlightenment plan called the "Sakai City Action Plan for the United Nations Decade for Human Rights Education". Following on from previous efforts, in 2007 Sakai enacted the "City Ordinance for Community Development Respecting Peace and Human Rights" and the Sakai City Human Rights Policy Promotion Plan", and has since comprehensively and systematically advanced human rights policy.

60. A programme of the People's Movement for Human Rights Education (PDHRE) since 1998, included the development of 30 human rights cities and the training of 500 young community leaders at four Regional Learning Institutions for Human Rights Education. By 2007, PDHRE had trained 100 community leaders, and 17 human rights cities were in development.[26]

61. In the Republic of Korea, several local governments and cities have been leading the human rights city movement domestically and internationally. Gwangju was the first human rights city officially announced in the Republic of Korea and Asia in 2010 with full-fledged programmes consisting of its Human Rights Charter, human rights action plan with human rights indicators, ombudsperson, etc. Other local governments, such as Seongbuk-gu and Chungnam Province, have also adopted the human rights city framework as a way to

[25] Australia, Department of infrastructure and regional development.

[26] Rosario, Argentina, Graz, Austria, Santa Cruz, Plurinational State of Bolivia, Bihac, Bosnia and Herzegovina, Porto Alegre, Brazil, Edmonton, Winnipeg, Canada, Temuco and Valparaiso, Chile, Bongo, Newton, Wa, Nimamobi, Walewale, Ghana, Nagpur, India, Korogocho, Kenya, Kita, Kati, Kayes, Sikasso, Timbuktu, Mali, Bucuy Municipality, Philippines, Musha, Rwanda, Thies, Senegal, Mogale, South Africa, Kaohsiung, Taiwan Province of China

address the challenges in their own contexts, such as a district city within a metropolitan city and an urban-rural complex area.

62. Seoul, the capital of the Republic of Korea, has also declared itself a human rights city and adopted an ordinance in 2012 to protect and promote human rights for its citizens. The ordinance establishes a Human Rights Division within the City Government, human rights policies, a Human Rights Ombudsperson, as well as concrete measures and guidelines to safeguard adequate housing and protect citizens from forced evictions. Other human rights ordinances include the Ordinance on the Promotion of Human Rights of Persons with Disabilities and the Ordinance on the Protection and Promotion of Human Rights of the Child and Youth. Human rights mechanisms include the Human Rights Division, which carries out human rights education programmes and builds cooperation with civil society, the Ombudsperson, the Seoul Committee on Human Rights and the Citizen Jury on Human Rights Cases. Major policies on human rights implemented by the Human Rights Division include the Seoul Action Plan on Human Rights, to mainstream human rights in overall administration. Human rights sensitivity has been enhanced through human rights education for civil servants and by supporting human rights organizations and activities.

63. Like Brazil's groundbreaking City Statute (2001), the Mexico City Charter also establishes new rights at a collective dimension of certain individual rights, such as the social function of property. This is a key component of the right to the city that entails fundamental urban reforms and the redistribution and regulation of urban land for the purpose of constructing a more just and inclusive city. The Mexico City Charter also incorporates at least two important principles addressing the right to the city as first articulated by Lefebvre: (a) the right to participate in decisions affecting urban inhabitants and the production of urban space; and (b) the right to appropriate urban space in favour of its use value over exchange value. Notably, these components include legal rights, social and political claims and material conditions.

64. The Alliance for Democracy and Tolerance against Extremism and Violence focuses on transferring successful projects and possible solutions among municipalities across regions of Germany. In certain cities, local equality bodies as well as regional commissions, human rights centres, equality bodies and other institutions are established by regional or local governments and maintained by law.[27] The "human rights city council" of the City of Graz (Austria) stands as one example.[28]

65. In Slovenia, the Local Government Act (§39) defines rights of national minorities and Roma population to have a formal representation in municipal council, and other municipalities might establish municipal bodies to deal with human rights issues. The programme for solving settlement issues of the Roma population is managed by the State and financially supported by the State budget.

66. In the United States, human rights mainstreaming in local administration is taking place through initiatives such as Bringing Human Rights Home: How State and Local Governments Can Use Human Rights to Advance Local Policy. It includes aspirational commitments to, and raising awareness of, human rights, reframing local concerns as human rights issues, reporting on local compliance with human rights treaties, conducting human rights-based audits and impact assessments, and fostering participatory governance. The federal role in respecting and ensuring human rights at the state and local level includes fostering additional reporting, monitoring and education initiatives. The Human Rights

[27] Austria, European Training and Research Centre for Human Rights and Democracy.
[28] Ibid.

Institute at Columbia Law School in the United States works to promote human rights at home and ensure United States compliance with international human rights standards. The project advocates for greater coordination of federal, state and local efforts to promote and protect human rights within the United States, working directly with state and local agencies. However, state and local efforts are *ad hoc*, patchwork and vulnerable to elimination through budget cuts.[29]

67. In Denmark, a development project was launched: "The municipality and Civil Society" (2008) to test the extent to which new ways to share responsibilities between the municipality and civil society can help to increase the quality of local government tasks. There is an untapped potential – both in terms of new areas for closer interaction and in relation to the involvement of new groups of volunteers.[30]

68. Graz is a member of the executive committee of the European City Coalition against Racism, the "Forum der Europapreisträgerstädte", and the cities coalition "Cities for Children", and was the Cultural Capital of Europe in 2003. In November 2009, Graz invited partner-towns to exchange successful methods of integration for immigrants against racism. Campaigns against racism and anti-discrimination have been organized with other cities and with NGOs.

69. Through its programme "Medellin protects Human Rights", the City Council seeks to guarantee for the city integral protection, acknowledgement, restoration and reparation of human rights. The organs empowered for the implementation of this goal are the Sub-Secretary of Human Rights, which is composed of three Units, including a Human Rights Unit, whose activities and some of its programmes are described by the collaborator. The Unit has the duty to coordinate its actions with the diverse national organs, social organizations and NGOs. The Unit includes a Municipal System for Information on Human Rights, which consists of a tool for the gathering, processing and analysis of information related to human rights and International Humanitarian Law.

70. In San Francisco, the Commission on the Status of Women is required by a city charter amendment to conduct gender analysis of its commissions and boards every two years. There also, the San Francisco Gender Equality Principles Initiative is a programme that helps companies around the world achieve greater equality and build more productive workplaces through practical implementations of the Initiative. A Violence against Women Prevention and Intervention Grants Program addresses domestic violence, sexual assault, and human trafficking in a variety of San Francisco communities. San Francisco's Collaborative against Human Trafficking, launched in 2010, comprises a diverse array of community-based organizations and government agencies dedicated to eliminating modern-day slavery from the city.[31]

X. Conclusions and recommendations

71. **Civil society should actively be involved in human rights planning and implementation at the local level. It can pressure local authorities into adopting a human rights-based approach and making them more engaged. It also has an important monitoring role and can provide independent information and assessment**

[29] Human Rights Institute. Columbia Law School

[30] Denmark, The Danish Institute for Human Rights, Questionnaire on local government and human rights", available at
http://www.ohchr.org/Documents/HRBodies/HRCouncil/AdvisoryCom/LocalGvt/Denmark%20-%20Danish%20Institute%20for%20Human%20Rights.pdf

[31] San Francisco Department on the Status of Women

of local government performance. Civil society organizations may also work directly with local government to strengthen its human rights expertise and awareness.

72. Local public officials should keep up ongoing dialogue with citizens and with civil society. There have to be well-developed channels for this communication and collaboration.

73. Measures should be taken, both nationally and internationally, to strengthen civil society capacity to monitor and engage with local government. Outside large urban municipalities, civil society is often weak and has little experience of monitoring or cooperating with local government.[9] International city networks such as the United Cities and Local Governments (UCLG) can play a key role in developing toolkits, foster research, provide opportunities for peer-to-peer learning and create communities for action.

74. Central government is responsible for providing valuable information on human rights and their impact at the local level to local governments. This obligation to inform the respective bodies at the local level includes both human rights of the national constitution or other law and human rights guaranteed by international law. Developments in improving human rights on the international level (e.g. new treaties and conventions, recommendations, guidelines and examples of best practice) must be brought to the local level. In doing so, it is of utmost importance that there is more than mere information *in abstracto*. There is a need for making human rights more concrete and more practicable for the specific needs on the local level. Particularly when it comes to international guarantees of human rights, the central government has to translate the relevant issues of human rights protection into concrete measures to be taken or standards to be obeyed.

75. In making human rights more practicable and more effective on the local level, specific areas that are highly connected to the effective implementation of human rights at the local level should be identified. For example, if public services are provided at the local level, this can be identified as a field where non-discriminatory access must be guaranteed. In order to support the local government in the observance of human rights, "road maps" for human rights implementation for these specific areas should be developed. They could be a valuable tool to facilitate the implementation of human rights at the local level (by non-experts in human rights).

76. In its report to the Human Rights Council, the Advisory Committee emphasized the negative impact of corruption on the enjoyment of human rights (A/HRC/28/73). It recommended building up an integrated strategy for the promotion of human rights and for the fight against corruption. This outcome of the report is also relevant for the promotion of human rights at the local level. Specific attention should be paid to any area at the local level being prone to corruption, especially the provision of public services. On the one side, taking measures against corruption should be regarded as a human rights issue. On the other side, promoting human rights cannot be successful and effective without taking measures against corruption. Specific consideration should therefore be given to any preventive measures in this regard.

77. In the context of monitoring of the domestic implementation of international human rights commitments, the relevant United Nations mechanisms should encourage States to engage in a dialogue with local governments as well. Local authorities should be involved in the Universal Periodic Review (UPR) in respect of

[9] Local Government and Human Rights: Doing Good Service, p. 76.

their Government; this would improve the quality of the follow-up to the accepted recommendations. UPR recommendations and concluding observations of the United Nations treaty bodies should be disseminated by the central government to the local authorities. A reference should also be made to the Harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty-specific targeted documents, in which the reporting States are encouraged to ensure the "participation of governmental departments at the central, regional and local levels and, where appropriate, at the federal and provincial levels" (HRI/MC/2005/3, para. 50 (a)).

78. There is also a need to develop guiding principles for local government and human rights, taking into account various standards related to the role of local government and the city in implementing internationally recognized human rights. Such guiding principles, once adopted, will be a useful instrument to clarify the role of various actors and institutions, and to develop concrete strategies in implementing the recommendations of the present report and other recommendations from special procedures of the Human Rights Council, its UPR mechanism and United Nations treaty bodies.